

**RIGHT TO KNOW ADVISORY COMMITTEE
LEGISLATIVE SUBCOMMITTEE**

DRAFT AGENDA

September 1, 2011

1:00 p.m.

Room 438, State House, Augusta

Convene

1. Welcome and Introductions
2. Criminal History Record Information Act revision: progress report
Draft: Criminal Law Advisory Commission (Charlie Leadbetter, Special Assistant Attorney General)
Discussion, identify issues needing further discussion
3. LD 1465, An Act To Amend the Laws Governing Freedom of Access
Explanation: Chris Cinquemani and Sam Adolphsen, Maine Heritage Policy Center
Discussion
4. Requests for public records: necessity of formalities
In writing
Citation to FOA laws, Title 1, chapter 13
Guidance?
5. Other?
6. Scheduling future subcommittee meetings

Scheduled meetings:

Monday, September 12, 2011, 9:00 a.m., Bulk Records Subcommittee

Thursday, September 29, 2011, 9:00 a.m., Public Records Exceptions Subcommittee

Thursday, September 29, 2011, 1:00 p.m., Right to Know Advisory Committee

Adjourn

CURRENT CRIMINAL HISTORY RECORD INFORMATION ACT

16 M.R.S.A. ch. 3, sub-ch 8 [§§ 611-623]

Addresses both Criminal History Record Information
and Investigative Information – 2
mutually exclusive forms of information in the Act

Criminal History Record Information:
definition (§ 611(3))

Intelligence and Investigative Information:
definition (§ 611(8))
Limitation on Dissemination (§ 614)
Class E crime for Unlawful dissemination (§ 614(4))

Conviction Data and Nonconviction
Data are 2 mutually exclusive
categories of Criminal History Record
Information

Conviction Data:
definition (§ 611(2))
limitation on dissemination (§§ 615 & 616)
exceptions (§ 612 (2))
Class E crime for unlawful dissemination (§ 619)
Right of access and review by subject (§ 620)

Nonconviction Data:
definition (§ 611(9))
limitation on dissemination (§§ 613, 617 & 618)
exceptions (§ 612 (2) and (3))
Class E crime for unlawful dissemination (§ 619)
Right of access and review by subject (§ 620)

PROPOSED CRIMINAL HISTORY RECORD INFORMATION ACT

16 M.R.S.A. ch. 3, sub-ch 8-A [§§ 624-630-B]

Addresses only Criminal History Record Information. (§ 624). Intelligence and Investigative Information is addressed in a separate proposed sub-chapter (sub-ch. 10).

Criminal History Record Information:
definition (§ 625(2))

Public Criminal History Record Information
(formerly called Conviction Data) and Confidential
Criminal History Record Information (formerly
called Nonconviction Data) are 2 mutually exclusive
categories of Criminal History Record Information
(§ 624)

Public Criminal History Record Information:
definition (§ 625(8))
dissemination (§ 626)
inapplicably of subchapter to certain records (§ 630)
right of access and review by subject (§ 630-A)

Confidential Criminal History Record Information:
definition (§ 625(7))
dissemination (§ 627)
Class E crime of unlawful dissemination (§ 629)
inapplicably of subchapter to certain records (§630)
right of access and review by subject (§ 630-A)

PROPOSED INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT

16 M.R.S.A. ch. 3, sub-ch 10 [§§ 640-647]

Addresses only Intelligence and Investigative Information (§ 641).
Criminal History Record Information is addressed in a separate
proposed sub-chapter (sub-ch. 8-A).

Intelligence and Investigative Information:
definition (§ 640(6))
limitations on dissemination and use (§§ 642, 644 & 645)
exceptions (§ 643)
no right to access or review by subject (§ 646)
Class E crime of unlawful dissemination (§ 647)

**An Act to Amend the Laws Relating to Criminal History
Record Information**

Be it enacted by the People of the State of Maine as follows:

§ 1. 16 MRSA c. 3, sub-c 8 is repealed

§ 2. 16 MRSA c. 3, sub-c 8-A is enacted to read:

SUBCHAPTER 8-A

CRIMINAL HISTORY RECORD INFORMATION ACT

§624. Scope. This subchapter addresses the dissemination of criminal history record information by any Maine criminal justice agency. It creates two separate and mutually exclusive categories of criminal history record information – namely, “public criminal history record information” and “confidential criminal history record information.” Unlike the dissemination of public criminal history record information, significant limitations are imposed on the dissemination of confidential criminal history record information by any Maine criminal justice agency.

§625. Definitions.

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means activities relating to the apprehension or summoning, detention, pretrial release, post-trial release, prosecution, adjudication, sentencing, correctional custody and supervision or rehabilitation of accused persons or convicted criminal offenders. It includes the collection, storage and dissemination of criminal history record information.

2. Criminal history record information. "Criminal history record information" means information of record collected by a criminal justice agency or at the direction of a criminal justice agency that connects a specific, identifiable person, including a juvenile treated by statute as an adult for criminal prosecution purposes, with formal involvement in the criminal justice system either as an accused or as a convicted criminal offender. "Formal involvement in the criminal justice system either as an accused or as a convicted criminal offender" means while within the jurisdiction of the criminal justice system commencing with arrest, summons or initiation of formal criminal charges and concluding with the completion of every sentencing alternative imposed as punishment or final discharge from an involuntary commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent. "Criminal history record information" includes, but is not limited to, identifiable descriptions or notations of: summonses and arrests; detention; bail; formal criminal charges such as complaints, informations and indictments; any disposition stemming from such charges; post-plea or post-adjudication sentencing; involuntary

commitment; execution of and completion of any sentencing alternatives imposed; release and discharge from involuntary commitment; any related pretrial and post-trial appeals, collateral attacks and petitions; and petitions for and warrants of pardons, commutations, reprieves and amnesties. The term does not include: identification information such as fingerprints, palmprints, footprints or photographic records to the extent that the information does not indicate formal involvement of the specific individual in the criminal justice system; information of record of civil proceedings, including traffic infractions and other civil violations; intelligence and investigative information as defined in section 640; or information of record of juvenile crime proceedings or their equivalent. Specific information regarding a juvenile crime proceeding is not criminal history record information notwithstanding that a juvenile has been bound over and treated as an adult or that by statute specific information regarding a juvenile crime proceeding is usable in a subsequent adult criminal proceeding.

3. Criminal justice agency. "Criminal justice agency" means a government agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order. [Maine courts, courts in any other jurisdiction,] the Maine Department of the Attorney General, district attorney offices and the equivalent departments or offices in any federal or state jurisdiction are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government and any federally recognized Indian tribe.

4. Disposition. "Disposition" means information of record disclosing that a criminal proceeding has been concluded, although not necessarily finalized, and the specific nature of the concluding event. It includes, but is not limited to: an acquittal; a dismissal, with or without prejudice; filing of a charge by agreement of the parties or by a court; a defendant who is currently a fugitive from justice; a conviction, including the acceptance by a court of a plea of guilty or nolo contendere; a deferred disposition; a proceeding indefinitely continued or dismissed due to a defendant's incompetence; a finding of not criminally responsible by reason of insanity or its equivalent; a mistrial, with or without prejudice; a new trial ordered; an arrest of judgment; a sentence imposition; a resentencing ordered; an execution of and completion of any sentence alternatives imposed, including but not limited to fines, restitution, correctional custody and supervision, administrative release; a release or discharge from a commitment based upon a finding of not criminally responsible by reason of insanity or its equivalent; death of defendant; any related pretrial and post-trial appeals, collateral attacks and petitions; a pardon, commutation, reprieve or amnesty; or extradition. "Disposition" also includes information of record disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor, that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings, or a grand jury has returned a no bill.

5. Dissemination. "Dissemination" means the transmission of information by any means, including but not limited to,

orally, in writing or electronically, by or to anyone outside the agency that maintains the information.

6. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access thereto.

7. Confidential criminal history record information. "Confidential criminal history record information" means criminal history record information of the following types:

A. Unless the person remains a fugitive from justice, summons and arrest information without disposition if an interval of more than one year has elapsed since the date the person was summonsed or arrested and no active prosecution of a criminal charge stemming from the summons or arrest is pending;

B. Information disclosing that the responsible law enforcement agency or officer has elected not to refer a matter to a prosecutor;

C. Information disclosing that the responsible prosecutorial office or prosecutor has elected not to initiate or approve criminal proceedings;

D. Information disclosing that a grand jury has returned a no bill;

E. Information disclosing that a criminal proceeding has been indefinitely postponed or dismissed because the person charged is found by the court to be mentally incompetent to stand trial;

F. Information disclosing that a criminal charge has been filed, if the filing period is indefinite or for more than one year;

G. Information disclosing that a criminal charge has been dismissed by a court with prejudice or dismissed with finality by a prosecutor other than as part of a plea agreement;

H. Information disclosing that a person has been acquitted of the charge. A verdict or accepted plea of not criminally responsible by reason of insanity, or its equivalent, is not an acquittal of the criminal charge;

I. Information disclosing that a criminal proceeding has terminated in a mistrial with prejudice;

J. Information disclosing that a criminal proceeding has terminated in an arrest of judgment based on lack of subject matter jurisdiction;

K. Information disclosing that a criminal proceeding has been terminated because the court lacked jurisdiction over the defendant; and

L. Information disclosing that a person has been granted a full and free pardon or amnesty.

8. Public criminal history record information. "Public criminal history record information" means criminal history record information other than confidential criminal history record information.

9. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam and American Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.

10. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

§626. Dissemination of public criminal history record information.

1. General rule. Public criminal history record information is public for purposes of Title 1, chapter 13. It may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose. It makes no difference whether the public criminal history record information relates to a crime for which a person is currently

within the jurisdiction of the criminal justice system or, instead, is no longer within that jurisdiction. There is no time limitation on dissemination of public criminal history record information.

2. Required inquiry to State Bureau of Identification. A Maine criminal justice agency[, other than a court,] shall query the State Bureau of Identification prior to dissemination of any public criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, “noncriminal justice purpose” means use of public criminal history record information other than for the administration of criminal justice or criminal justice agency employment.

§627. Dissemination of confidential criminal history record information

1. General rule. Confidential criminal history record information may be disseminated by a Maine criminal justice agency, whether directly or through any intermediary, only to authorized persons or entities.

2. Authorized persons and entities. The following are authorized persons or entities:

A. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

B. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization means language in the statute, executive order, or court rule, decision or order that specifically speaks of confidential criminal history record information or specifically refers to one or more of the types of confidential criminal history record information;

C. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement must specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations;

D. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement must specifically authorize access to confidential criminal history record information, limit the use of the information to research, evaluation or statistical purposes, insure the confidentiality and security of the information consistent with this subchapter, and provide sanctions for any violations;

E. Any person upon specific inquiry made to the agency as to whether a named individual was summonsed or arrested, detained or had formal criminal charges initiated on a specific date. The disclosing criminal justice agency shall disclose

therewith any and all confidential criminal history record information in its possession that indicates the disposition of the summons or arrest, detention or formal charges;

F. The public for the purpose of announcing the fact of a specific disposition that is confidential criminal history record information, other than that contained in paragraph A, subsection 7 of section 625, within 30 days of the date of occurrence of that disposition, or at any point in time if the person to whom the disposition relates specifically authorizes that it be made public; and

H. Public entity for purposes of international travel, such as issuing visas and granting of citizenship.

3. Confirming existence or nonexistence of such information. A criminal justice agency may not confirm the existence or nonexistence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself; and

4. Required inquiry to State Bureau of Identification. A criminal justice agency[, other than a court,] shall query the State Bureau of Identification prior to dissemination of any confidential criminal history record information for a noncriminal justice purpose to ensure that the most up-to-date disposition information is being used. As used here, “noncriminal justice purpose” means use of confidential criminal history record information other than for the

administration of criminal justice or criminal justice agency employment.

§ ____. **Prohibition against further dissemination of confidential criminal history record information by a person or entity.** Confidential criminal history record information dissemination by a Maine criminal justice agency to a person or public or private entity addressed in subsection 1, paragraphs A, B, C, D, or H of section 627 must be used by that person or entity solely for the purpose for which it was disseminated and may not be disseminated further.

Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. The section would prohibit conduct by a person or entity other than a Maine criminal justice agency.

§ 628. Public information about persons detained following arrest.

1. Requirement of record. Every criminal justice agency that maintains a holding facility, as defined in Title 34-A, section 1001, subsection 9, shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

A. Identity of the arrested person, including name, date of birth, and residence, [and occupation,] if any;

B. Statutory or customary description of the crime or crimes for which the person was arrested including the date and geographic location where the crime is alleged to have occurred;

C. Date, time and place of the arrest; and

D. Circumstances of the arrest including, when applicable, physical force used in making the arrest, resistance, including weapons, or refusal to submit by arrested person, and pursuit.

2. Time and method of recording. The information required to be recorded by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be recorded and maintained in chronological order and must be kept in a suitable, permanent record of the agency making it. The information required by this section may be combined by a sheriff with the record required by Title 30-A, section 1505.

3. Information public. The information required to be recorded and maintained by this section is public criminal history record information.

§629. Unlawful dissemination of confidential criminal history record information.

1. Offense. A person is guilty of unlawful dissemination of confidential criminal history record information if the person intentionally disseminates confidential criminal history record information knowing it to be in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination of confidential criminal history record information is a Class E crime.

§630. Inapplicability of this subchapter to criminal history record information contained in certain records. This subchapter does not apply to public and confidential criminal history record information contained in:

A. Posters, announcements or lists for identifying or apprehending fugitives from justice or wanted persons;

B. Records of entry, such as calls for service (formerly police blotters), that are maintained by criminal justice agencies, that are compiled and organized chronologically and required by law or longstanding custom to be made public;

C. [Records, retained at and by the District Court and the Superior Court of Maine, of public judicial proceedings, including, but not limited to, docket entries and original court files, and] court records of public judicial proceedings [from federal and state courts];

D. Published court or administrative opinions not impounded or otherwise declared confidential;

E. Records of public administrative or legislative proceedings;

F. Records of traffic crimes maintained by the Secretary of State or by a state department of transportation or motor vehicles or the equivalent thereof for the purposes of regulating the issuance, suspension, revocation or renewal of a driver's, pilot's, or other operator's license; and

G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

§ 630-A Right to access and review.

1. Inspection. Any person or the person's attorney may inspect the criminal history record information concerning that person maintained by a criminal justice agency. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions are to ensure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or the person's attorney with a copy of the criminal

history record information pertaining to the person on request and payment of a reasonable fee.

2. Review. A person or the person's attorney may request amendment or correction of criminal history record information concerning the person by addressing, either in person or by mail, the request to the criminal justice agency in which the information is maintained. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 [30?] days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons for the refusal, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, the head of the agency shall permit the requesting person to file with the agency a concise statement setting forth the reasons for the disagreement with the refusal. The head of the agency shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement must be included, along with, if the agency determines it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, appeal to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 and the Maine Rules of Civil Procedure, Rule 80C.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. Right of release. The provisions of this subchapter do not limit the right of a person to disseminate to any other person criminal history record information pertaining to that person.

§630-B. Application to prior Maine Criminal History Record Information

The provisions of this subchapter apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other

provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

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§ 3 16 MRSA c. 3, sub-c 10 is enacted to read

SUBCHAPTER 10

INTELLIGENCE AND INVESTIGATIVE INFORMATION ACT

§640. Definitions

1. **Administration of criminal justice.** “Administration of criminal justice” means activities relating to the anticipation, prevention, detection, monitoring, or investigation of known or suspected crimes. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of criminal justice.

2. **Administration of civil justice.** “Administration of civil justice” means activities relating to the anticipation, prevention, detection, monitoring, or investigation of known or suspected civil violations, traffic infractions, juvenile crimes and prospective and pending civil actions. It includes the collection, storage and dissemination of intelligence and investigative information relating to the administration of civil justice.

3. **Criminal justice agency.** “Criminal justice agency” means a government agency or any subunit thereof that performs the administration of criminal justice or the administration of civil justice pursuant to a statute or executive order. [Maine courts and courts in any other jurisdiction are considered criminal justice agencies.] “Criminal justice agency”

also includes any equivalent agency at any level of the Canadian government and any federally recognized Indian tribe.

4. Dissemination. “Dissemination” means the transmission of information by any means, including but not limited to, orally, in writing or electronically, by or to anyone outside the agency that maintains the information.

5. Executive order. “Executive order” means an order of the President of the United States or the chief executive of a state that has the force of law and that is published in a manner permitting regular public access thereto.

6. Intelligence and investigative information. “Intelligence and investigative information” means information of record collected by a criminal justice agency or at the direction of a criminal justice agency while performing the administration of criminal justice or the administration of civil justice. The term also includes information of record concerning security plans and procedures and investigative techniques and procedures prepared or collected by a criminal justice agency or another agency. “Intelligence and investigative information” does not include criminal history record information as defined in section 625. Nor does it include information of record collected to anticipate, prevent or monitor possible juvenile crime activity or information compiled in the course of investigation of known or suspected juvenile crimes to the extent addressed in the Maine Juvenile Code.

7. State. “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the

Commonwealth of the Northern Mariana Islands, the United States Virgin Island, Guam and American Samoa. It also includes the federal government of Canada and any provincial government of Canada and any federally recognized Indian tribe.

8. Statute. “Statute” means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

§ 641. Application

This subchapter applies to a record that is or contains intelligence and investigative information and that is prepared by, prepared at the direction of or kept in the custody of any Maine criminal justice agency.

§642. Limitation on dissemination of intelligence and investigative information

Except as provided in section 643, a record that contains intelligence and investigative information is confidential and may not be disseminated to any person or public or private entity if there is a reasonable possibility that public release or inspection of the report or record would:

1. Interfere. Interfere with law enforcement proceedings relating to crimes, civil violations, traffic infractions, juvenile crimes or civil actions;

2. Result in dissemination of prejudicial information. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;

3. Constitute an invasion of privacy. Constitute an unwarranted invasion of personal privacy;

4. Disclose confidential source. Disclose the identity of a confidential source;

5. Disclose confidential information. Disclose confidential information furnished only by the confidential source;

6. Disclose trade secrets. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

7. Disclose investigative techniques; security plans. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;

8. Endanger law enforcement or others. Endanger the life or physical safety of any individual, including law enforcement personnel;

9. Disclose arbitration or mediation information. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;

10. Statutorily confidential information. Disclose information designated confidential by some other statute; or

11. Identify sources of consumer or antitrust complaints. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

§ 643. Exceptions

Nothing in this subchapter precludes dissemination of intelligence and investigative information by a Maine criminal justice agency to:

1. Another criminal justice agency. Another criminal justice agency;

2. A government agency or subunit statutorily responsible for investigating child or adult abuse, neglect or exploitation. A government agency or subunit thereof that pursuant to statute is responsible for investigating abuse, neglect or exploitation of children [under Title 22, chapter 1071] or incapacitated or dependent adults [under Title 22, chapter 958-A] for use in the investigation of suspected abuse, neglect or exploitation, subject

to reasonable limitations to protect the interests described in section 642.

3. An accused person or that person's agent or attorney.

A person accused of a crime or that person's agent or attorney for trial purposes if authorized by:

A. The responsible prosecutorial office or prosecutor; or

B. A court rule or court order.

As used in this subsection "agent" means a licensed private investigator, an expert witness, or a parent, foster parent or guardian if the accused person has not attained 18 years of age.

4. A crime victim or that victim's agent or attorney. A crime victim or that victim's agent or attorney, subject to reasonable limitations to protect the interests described in section 642. As used in this subsection "agent" means a licensed private investigator, or immediate family if due to death, age, physical or mental disease, disorder or defect, the victim cannot realistically act in their own behalf.

5. A counselor or advocate. A sexual assault counselor, as defined in section 53-A, subsection 1, paragraph B, or an advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in section 642. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

A. Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;

B. Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;

C. Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;

D. Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;

E. Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;

F. Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;

G. Permit and criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this subsection; and

H. Provide sanctions for any violations of this subsection.

The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this subsection; or

ALTERNATIVE A

6. A government agency or subunit statutorily responsible for licensing entities or individuals that provide healthcare or social services. A government agency or subunit thereof that pursuant to statute is responsible for licensing entities or individuals that provide healthcare or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to reasonable limitations to protect the interests described in section 642.

ALTERNATIVE B

6. A government agency or subunit statutorily responsible for licensing individuals who engage in a particular occupation or social services. A government agency or subunit thereof that pursuant to statute is responsible for licensing individuals who engage in a particular occupation or social services for use in the investigation of potential violations of laws enforced by the government agency or subunit subject to

reasonable limitations to protect the interests described in section 642.

§ ____. **Prohibition against release of identifying information of those providing information as to cruelty to animals.** The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

Note: CLAC voted not to include this proposed section. It would logically go here if the decision was made to add it. CLAC believes this provision, making confidential identifying information under these circumstances, more properly belongs as part of a Department statute expressly addressing persons being encouraged to provide information to the Department pertaining to criminal or civil cruelty to animals.

§ 644. Restriction on use of disseminated intelligence and investigative information

Intelligence and investigative information that is disseminated to a person or public or private entity that is not a criminal justice agency under section 640 may be used solely for the purpose for which it was disseminated and may not be disseminated further.

§ 645. Confirming existence or nonexistence of intelligence and investigative information

Except as provided in section 642 and 643, a criminal justice agency to whom this subchapter applies may not confirm the existence or nonexistence of intelligence and investigative information to any person or public or private entity that is not eligible to receive the information itself.

§ 646. No right to access or review

A person who is the subject of intelligence and investigative information maintained by a criminal justice agency has no right to inspect or review that information for accuracy or completeness.

§ 647. Unlawful dissemination of intelligence and investigative information

1. Offense. A person is guilty of unlawful dissemination of intelligence and investigative information if the person intentionally disseminates intelligence and investigative information knowing it to be in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination of intelligence and investigative information is a Class E crime.

125th Legislature
Senate of
Maine
Senate District 31

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August 31, 2011

Honorable David R. Hastings III, Chairman
Right to Know Advisory Committee
Maine Statehouse
Augusta, ME 04330

Dear Senator Hastings and members of the Right to Know Advisory Committee:

As the Right to Know Advisory Committee undertakes its important work considering issues related to open government, it will be reviewing legislation that I had the privilege of sponsoring during this 125th Legislature.

The bill, LD 1465 – “An Act To Amend the Laws Governing Freedom of Access”, would accomplish a series of reforms to strengthen Maine’s Freedom of Access Laws and expand government transparency and accountability. I sponsored this bill because I believe it is vitally important that each and every citizen and taxpayer has timely and complete access to the details of government at all levels. LD 1465 helps ensure government cannot operate behind a cloak of secrecy.

The improvements to our Right to Know laws this bill delivers come at a critical moment. Government at all levels has increased in size and complexity. In light of this growth, we must ensure government is as open as possible and always accountable to the people. Operating in the sunshine of transparency will go a long way toward creating goodwill and trust with the people we serve.

This belief in open government does not fall along partisan or ideological lines. Organizations ranging from the Maine Heritage Policy Center to the Maine Civil Liberties Union to the Maine Press Association were involved in the drafting of this legislation. And the 30 Democrat and Republican legislative cosponsors of this bill include the Senate Democrat Leader, the Assistant Senate Democrat leader, the Assistant Senate Republican Leader and the Assistant House Democrat Leader. The level of support this bill has received from a diverse group of individuals and organizations is inspiring, and I hope the Right to Know Committee appreciates the intent of supporters to ensure Maine government is open and accountable.

Recently, we saw a disturbing example of what can happen when publicly-funded organizations lack oversight and accountability. The Maine Turnpike Authority’s misuse of public dollars is an important reminder that government offices require a watchful eye. We must do whatever possible to make sure that transparency and accountability is expanded so we can identify and eliminate misuse of taxpayers’ dollars. Strengthening our Freedom of Access laws is a vital step toward ensuring events like those that took place at the Maine Turnpike Authority will become a thing of the past.

As you deliberate over this critical issue, I would remind you that government exists by the authority of citizens and taxpayers. At times, public access and government transparency may be inconvenient, frustrating, time consuming and even embarrassing. But guaranteeing and expanding openness must be our responsibility as government officials and stewards of taxpayer dollars.

Thank you for the important work you do on behalf of Maine people, and for your sincere consideration of LD 1465.

Sincerely,



Richard Rosen
State Senator

TITLE 16
COURT PROCEDURE -- EVIDENCE

CHAPTER 3
RECORDS AND OTHER DOCUMENTS

SUBCHAPTER 8
CRIMINAL HISTORY RECORD INFORMATION ACT

§611. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Administration of criminal justice. "Administration of criminal justice" means detection, apprehension, detention, pre-trial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

2. Conviction data. "Conviction data" means criminal history record information other than nonconviction data.

3. Criminal history record information. "Criminal history record information" means notations or other written evidence of an arrest, detention, complaint, indictment, information or other formal criminal charge relating to an identifiable person. It shall include the identification or description of the person charged and any disposition of the charge. The term does not include identification information such as fingerprints, palm prints or photographic records to the extent that the information does not indicate involvement of the individual in the criminal justice system. The term does not include records of civil violations.

4. Criminal justice agency. "Criminal justice agency" means a federal, state, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

5. Disposition. "Disposition" means the conclusion of criminal proceedings, and includes acquittal, acquittal by reason of mental disease or defect, filing of case, dismissal of charge, dismissal of charge due to mental incompetency, continuance due to mental incompetence, guilty plea, nolo contendere plea, nolle prosequi, conviction, sentence, death of defendant, mistrial, new trial granted, release from correctional supervision, parole, pardon, amnesty or extradition. If the disposition is that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings, it shall include the nature of the termination or conclusion of the proceedings. If

the disposition is that the proceedings have been indefinitely postponed, it shall include the reason for that postponement.

6. Dissemination. "Dissemination" means the transmission of information, whether orally, in writing or by electronic means by or to anyone outside the agency which maintains the information.

7. Executive order. "Executive order" means an order of the President of the United States or the chief executive of a state which has the force of law and which is published in a manner permitting regular public access thereto.

8. Intelligence and investigative information. "Intelligence and investigative information" means information collected by criminal justice agencies or at the direction of criminal justice agencies in an effort to anticipate, prevent or monitor possible criminal activity, including operation plans of the collecting agency or another agency, or information compiled in the course of investigation of known or suspected crimes, civil violations and prospective and pending civil actions. "Intelligence and investigative information" does not include information that is criminal history record information.

9. Nonconviction data. "Nonconviction data" means criminal history record information of the following types:

- A. Arrest information without disposition, if an interval of one year has elapsed from the date of the arrest and no active prosecution of the charge is pending. To be an active prosecution the case must be still actively in process, with arraignment completed and the case docketed for court trial;
- B. Information disclosing that the police have elected not to refer a matter to a prosecutor;
- C. Information disclosing that a prosecutor has elected not to commence criminal proceedings;
- D. Information disclosing that criminal proceedings have been indefinitely postponed, e.g. a "filed" case, or a case which cannot be tried because the defendant is found to be mentally incompetent to stand trial;
- E. A dismissal;
- F. An acquittal, excepting an acquittal by reason of mental disease or defect; and
- G. Information disclosing that a person has been granted a full and free pardon or amnesty.

10. Person. "Person" means an individual, government agency or a corporation, partnership or unincorporated association.

11. State. "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.

12. Statute. "Statute" means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

§612. Application

1. Criminal justice agencies. This subchapter shall apply only to criminal justice agencies.

2. Exceptions. This subchapter shall not apply to criminal history record information contained in:

- A. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;
- B. Original records of entry, such as police blotters, that are maintained by criminal justice agencies and that are compiled and organized chronologically;
- C. Records, retained at and by the District Court and Superior Court, of public judicial proceedings, including, but not limited to, docket entries and original court files;
- D. Court or administrative opinions not impounded or otherwise declared confidential;
- E. Records of public administrative or legislative proceedings;
- F. Records of traffic offenses retained at and by the Secretary of State; and
- G. Petitions for and warrants of pardons, commutations, reprieves and amnesties.

3. Permissible disclosure. Nothing in this subchapter shall be construed to prohibit a criminal justice agency from:

- A. Disclosing to the public criminal history record information related to an offense for which a person is currently within the criminal justice system;
- B. Confirming prior criminal history record information to the public, in response to a specific inquiry that includes a specific name, date and charge or disposition, provided that the information disclosed is based upon data excluded by subsection 2. The disclosing criminal justice agency shall disclose therewith any and all criminal history record information in its possession which indicates the disposition of the arrest, detention or formal charges; and

C. Disseminating criminal history record information for purposes of international travel such as issuing visas and granting of citizenship.

§612-A. Record of persons detained

1. Requirement of record. Every criminal justice agency that maintains a facility for pretrial detention shall record the following information concerning each person delivered to it for pretrial detention for any period of time:

- A. Identity of the arrested person, including name, age, residence and occupation, if any;
- B. Offenses charged, including the time, place and nature of the offense;
- C. Time and place of arrest; and
- D. Circumstances of arrest, including force, resistance, pursuit and weapon, if any.

2. Time and method of recording. The record required by this section must be made immediately upon delivery of the person concerned to the agency for detention. It must be made upon serially numbered cards or sheets or on the pages of a permanently bound volume, made and maintained in chronological order, and must be part of the permanent records of the agency making it. The record required by this section may be combined with the record required by Title 30-A, section 1505.

3. Records public. The record required by this section shall be a public record, except for records of the detention of juveniles, as defined in Title 15, section 3003, subsection 14.

§613. Limitations on dissemination of nonconviction data

Except as provided in section 612, subsections 2 and 3, dissemination of nonconviction data by a criminal justice agency, whether directly or through any intermediary, shall be limited to:

1. Criminal justice agencies. Other criminal justice agencies for the purpose of the administration of criminal justice and criminal justice agency employment;

2. Under express authorization. Any person for any purpose when expressly authorized by statute, executive order, court rule, court decision or court order. Express authorization shall mean language in the statute, executive order, or court rule, decision or order which specifically speaks of nonconviction data or specifically refers to one or more of the types of nonconviction data;

3. Under specific agreements. Any person with a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice or to conduct investigations determining the employment suitability of prospective law enforcement officers. The agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, insure security and confidentiality of the data consistent with this subchapter and provide sanctions for any violations; and

4. Research activities. Any person for the express purpose of research, evaluation or statistical purposes or under an agreement with the criminal justice agency. The agreement shall specifically authorize access to data, limit the use of data to research, evaluation or statistical purposes, insure the confidentiality and security of the data consistent with this subchapter and provide sanctions for any violations.

§614. Limitation on dissemination of intelligence and investigative information

1. Limitation on dissemination of intelligence and investigative information.

Reports or records that contain intelligence and investigative information and that are prepared by, prepared at the direction of or kept in the custody of a local, county or district criminal justice agency; the Bureau of State Police; the Department of the Attorney General; the Maine Drug Enforcement Agency; the Office of State Fire Marshal; the Department of Corrections; the criminal law enforcement units of the Department of Marine Resources, the Department of Inland Fisheries and Wildlife or the Department of the Secretary of State, Bureau of Motor Vehicles, office of investigations (*added by PL 2011, c. 356, effective September 28, 2011*); or the Department of Conservation, Division of Forest Protection when the reports or records pertain to arson; or the Department of Agriculture, Food and Rural Resources when the reports or records pertain to animal cruelty (*added by PL 2011, c. 210, effective September 28, 2011*) are confidential and may not be disseminated if there is a reasonable possibility that public release or inspection of the reports or records would:

- A. Interfere with law enforcement proceedings;
- B. Result in public dissemination of prejudicial information concerning an accused person or concerning the prosecution's evidence that will interfere with the ability of a court to impanel an impartial jury;
- C. Constitute an unwarranted invasion of personal privacy;
- D. Disclose the identity of a confidential source;
- E. Disclose confidential information furnished only by the confidential source;
- F. Disclose trade secrets or other confidential commercial or financial information designated as such by the owner or source of the information or by the Department of the Attorney General;

- G. Disclose investigative techniques and procedures or security plans and procedures not generally known by the general public;
- H. Endanger the life or physical safety of any individual, including law enforcement personnel;
- I. Disclose conduct or statements made or documents submitted by any person in the course of any mediation or arbitration conducted under the auspices of the Department of the Attorney General;
- J. Disclose information designated confidential by some other statute; or
- K. Identify the source of complaints made to the Department of the Attorney General involving violations of consumer or antitrust laws.

1-A. Limitation on release of identifying information; cruelty to animals. The names of and other identifying information on persons providing information pertaining to criminal or civil cruelty to animals to the Department of Agriculture, Food and Rural Resources is confidential information and may not be disseminated.

2. Exception to this limitation.

3. Exceptions. Nothing in this section precludes dissemination of intelligence and investigative information to:

- A. Another criminal justice agency;
- B. A state agency responsible for investigating abuse, neglect or exploitation of children under Title 22, chapter 1071 or incapacitated or dependent adults under Title 22, chapter 958-A for use in the investigation of suspected abuse, neglect or exploitation;
- B-1. The division of licensing and regulatory services within the Department of Health and Human Services for use in the investigation of suspected abuse, neglect or exploitation in licensed, certified and registered facilities and programs that provide care to children and adults; *(added by PL 2011, c. 52, effective July 1, 2011)*
- C. An accused person or that person's agent or attorney if authorized by:
 - (1) The district attorney for the district in which that accused person is to be tried;
 - (2) A rule or ruling of a court of this State or of the United States; or
 - (3) The Attorney General;

D. A victim or victim's agent or attorney, subject to reasonable limitations to protect the interest described in subsection 1; or

E. An advocate, as defined in section 53-B, subsection 1, paragraph A, with a specific agreement with a criminal justice agency and subject to reasonable limitations to protect the interests described in subsection 1. An agreement between an advocate and a criminal justice agency must, at a minimum, include provisions that:

- (1) Permit the advocate to use reports or records that contain intelligence and investigative information for the purpose of planning for the safety of the victim named in the reports;
- (2) Prohibit the advocate from further disseminating reports or records that contain intelligence and investigative information;
- (3) Require the advocate to ensure that reports or records that contain intelligence and investigative information remain secure and confidential;
- (4) Require the advocate to destroy reports or records that contain intelligence and investigative information within 30 days after receiving the report or record;
- (5) Permit the criminal justice agency to perform reasonable and appropriate audits in order to ensure that records containing intelligence and investigative information that are obtained by and that are in the custody of the advocate are maintained in accordance with the requirements of this paragraph;
- (6) Require the advocate to indemnify and hold harmless the criminal justice agency with respect to any litigation that may result from the provision of reports or records that contain intelligence and investigative information;
- (7) Permit the criminal justice agency to immediately and unilaterally revoke an agreement made pursuant to this paragraph; and
- (8) Provide sanctions for any violations of this paragraph.

The Commissioner of Public Safety may adopt a model policy to standardize the provisions contemplated in this paragraph.

4. Unlawful dissemination of reports or records that contain intelligence and investigative information. A person that intentionally disseminates a report or record that contains intelligence and investigative information in violation of this section commits a Class E crime.

§615. Dissemination of conviction data

Conviction data may be disseminated to any person for any purpose.

§616. Inquiries required

A criminal justice agency shall query the State Bureau of Identification prior to dissemination of any criminal history record information for noncriminal justice purposes to assure that the most up-to-date disposition data is being used.

§617. Dissemination to noncriminal justice agencies

Criminal history record information disseminated to a noncriminal justice agency under section 613 shall be used solely for the purpose of which it was disseminated and shall not be disseminated further.

§618. Confirming existence or nonexistence of criminal history record information

Except as provided in section 612, subsection 3, paragraph B, no criminal justice agency shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

§619. Unlawful dissemination

1. Offense. A person is guilty of unlawful dissemination if he knowingly disseminates criminal history information in violation of any of the provisions of this subchapter.

2. Classification. Unlawful dissemination is a Class E crime.

§620. Right to access and review

1. Inspection. Any person or his attorney may inspect the criminal history record information concerning him maintained by a criminal justice agency. A person's right to inspect or review criminal history record information shall not include access to intelligence and investigative information or any other information which is not criminal history record information. A criminal justice agency may prescribe reasonable hours and locations at which the right may be exercised and any additional restrictions, including satisfactory verification of identity by fingerprint comparison, as are reasonably necessary. These restrictions shall be to insure the security and confidentiality of the criminal history record information and to verify the identity of the person seeking to inspect that information. The agency shall supply the person or his attorney with a copy of the criminal history record information pertaining to him on request and payment of a reasonable fee.

2. Review. A person or his attorney may request amendment or correction of criminal justice record information concerning him by addressing, either in person or by mail, his request to the criminal justice agency in which the information is maintained. The request shall indicate the particular record involved, the nature of the correction sought and the justification for the amendment or correction.

On receipt of a request, the criminal justice agency shall take necessary steps to determine whether the questioned information is accurate and complete. If investigation reveals that the questioned information is inaccurate or incomplete, the agency shall immediately correct the error or deficiency and advise the requesting person that the correction or amendment has been made.

Not later than 15 days, excluding Saturdays, Sundays and legal public holidays, after the receipt of a request, the agency shall notify the requesting person in writing either that the agency has corrected the error or deficiency or that it refuses to make the requested amendment or correction. The notice of refusal shall include the reasons therefor, the procedure established by the agency for requesting a review by the head of the agency of that refusal and the name and business address of that official.

3. Administrative appeal. If there is a request for review, the head of the agency shall, not later than 30 days from the date of the request, excluding Saturdays, Sundays and legal public holidays, complete the review and either make the requested amendment or correction or refuse to do so. If the head of the agency refuses to make the requested amendment or correction, he shall permit the requesting person to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal. He shall also notify the person of the provisions for judicial review of the reviewing official's determination under subsection 4.

Dissemination of the disputed criminal history record information by that agency with which the requesting person has filed a statement of disagreement, occurring after the filing of such statement, shall clearly reflect notice of the dispute. A copy of the statement shall be included, along with, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendment or correction requested.

4. Judicial review. If an administrative appeal brought pursuant to subsection 3 is denied by the head of the agency, or the requesting person believes the decision of the head of the agency to be otherwise unsatisfactory, the person may, within 30 days of the decision rendered by the head of the agency, seek relief in the Superior Court.

5. Notification. When a criminal justice agency has amended or corrected a person's criminal history record information in response to written request as provided in subsection 2 or a court order, the agency shall, within 30 days thereof, advise all prior recipients, who have received that information within the year prior to the amendment or correction, of the amendment or correction. It shall also notify the person of compliance with that requirement and the prior recipients notified.

6. Right of release. The provisions of this subchapter shall not limit the right of a person to disseminate to any other person criminal history record information pertaining to himself.

§621. Information and records of the Attorney General (REPEALED)

§622. Application

The provisions of this subchapter shall apply to criminal history record information in existence before July 29, 1976, including that which has been previously expunged under any other provision of Maine law, as well as to criminal history record information in existence on July 29, 1976 and thereafter.

§623. Attorney General fees

The Attorney General shall analyze the impact of this conformity provision upon the Department of the Attorney General. The Department of the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over judiciary matters to the First Regular Session of the 117th Legislature on this analysis and recommend a funding mechanism. The funding mechanism must include a fee for services to cover the costs associated with providing access and copying of records available to the public under this chapter.

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1465

S.P. 456

In Senate, April 12, 2011

An Act To Amend the Laws Governing Freedom of Access

Reference to the Committee on Judiciary suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator ROSEN of Hancock.

Cosponsored by Senators: ALFOND of Cumberland, COLLINS of York, DIAMOND of Cumberland, FARNHAM of Penobscot, HILL of York, HOBBS of York, KATZ of Kennebec, LANGLEY of Hancock, MARTIN of Kennebec, MASON of Androscoggin, McCORMICK of Kennebec, PLOWMAN of Penobscot, RECTOR of Knox, SHERMAN of Aroostook, SNOWE-MELLO of Androscoggin, THIBODEAU of Waldo, WHITEMORE of Somerset, Representatives: BEAVERS of South Berwick, DUNPHY of Embden, EVES of North Berwick, GUERIN of Glenburn, HARVELL of Farmington, HAYES of Buckfield, HINCK of Portland, O'CONNOR of Berwick, OLSEN of Phippsburg, ROSEN of Bucksport, SIROCKI of Scarborough, STRANG BURGESS of Cumberland, TURNER of Burlington.

1 Be it enacted by the People of the State of Maine as follows:

2 Sec. 1. 1 MRSA §402, sub-§1-B is enacted to read:

3 1-B. Public access officer. "Public access officer" means the person fulfilling the
4 duties as described in section 413.

5 Sec. 2. 1 MRSA §406, as amended by PL 1987, c. 477, §4, is further amended to
6 read:

7 **§406. Public notice**

8 Public notice ~~shall~~ must be given for all public proceedings as defined in section 402,
9 if these proceedings are a meeting of a body or agency consisting of 3 or more persons.
10 This notice ~~shall~~ must be given ~~in ample time to allow public attendance not less than 3~~
11 days prior to the public proceeding and ~~shall~~ must be disseminated in a manner
12 reasonably calculated to notify the general public in the jurisdiction served by the body or
13 agency concerned. In the event of an emergency meeting, local representatives of the
14 media ~~shall~~ must be notified of the meeting, whenever practical, the notification to
15 include time and location, by the same or faster means used to notify the members of the
16 agency conducting the public proceeding.

17 Sec. 3. 1 MRSA §408, as amended by PL 2009, c. 240, §4, is further amended to
18 read:

19 **§408. Public records available for public inspection and copying**

20 **1. Right to inspect and copy.** Except as otherwise provided by statute, every person
21 has the right to inspect and copy any public record during the regular business hours of
22 the agency or official having custody of the public record ~~within a reasonable period of~~
23 ~~time after making a request to inspect or copy the public record~~ the time limits
24 established in section 408-A. An agency or official may request clarification concerning
25 which public record or public records are being requested, but in any case the agency or
26 official shall acknowledge receipt of the request within a reasonable period of time. A
27 person may request by telephone that a copy of the public record be mailed or e-mailed to
28 that person.

29 **2. Inspection, translation and copying scheduled.** Inspection, translation and
30 copying may be scheduled to occur at such time as will not delay or inconvenience the
31 regular activities of the agency or official having custody of the public record sought, as
32 long as the inspection, translation and copying occur within the time limits established in
33 section 408-A. The agency or official may use a 3rd party to make a copy of an original
34 public record, but a requester may not remove the original of a public record from the
35 agency or official.

36 **2-A. Form.** If a public record exists in electronic or magnetic form, the requester
37 may request a copy of the public record in a paper, electronic, magnetic or other medium,
38 specify the storage medium and request that the copy be provided by an electronic
39 transfer by the Internet or other means.

1 A. An agency or official shall provide a copy of the public record in the requested
2 medium if:

3 (1) The agency or official has the technological ability to produce the public
4 record in that medium or can obtain the assistance necessary to produce the
5 public record at a reasonable cost; and

6 (2) The requester agrees to pay the agency's or official's costs to purchase and
7 install any additional necessary computer software or hardware to accommodate
8 the request and to copy the public record in a requested medium.

9 B. If an agency or official cannot provide a copy of a public record in a requested
10 medium, the agency or official shall identify every medium in which the public
11 record can be provided for inspection and copying, which must include a paper copy,
12 and the requester must identify the medium that is acceptable to the requester.

13 **3. Payment of costs.** Except as otherwise specifically provided by law or court
14 order, an agency or official having custody of a public record may charge fees as follows.

15 A. The agency or official may charge a reasonable fee to cover the cost of copying.

16 B. The agency or official may charge a fee to cover the actual cost of searching for,
17 retrieving and compiling the requested public record of not more than \$10 per hour
18 after the first hour of staff time per request. Compiling the public record includes
19 reviewing and redacting confidential information.

20 C. If translation is necessary, the agency or official may charge a fee to cover the
21 actual cost of translation.

22 D. An agency or official may not charge for inspection.

23 E. If the requester requests that the public record be mailed, the agency or official
24 may charge a fee not greater than the actual cost of mailing the record.

25 **4. Estimate.** The agency or official shall provide to the requester an estimate of the
26 time necessary to complete the request and of the total cost. If the estimate of the total
27 cost is greater than \$20, the agency or official shall inform the requester before
28 proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies and
29 the estimate must be provided within 3 business days of the request.

30 **5. Payment in advance.** The agency or official may require a requester to pay all or
31 a portion of the estimated costs to complete the request prior to the translation, search,
32 retrieval, compiling and copying of the public record if:

33 A. The estimated total cost exceeds \$100; or

34 B. The requester has previously failed to pay a properly assessed fee under this
35 chapter in a timely manner.

36 **6. Waivers.** The agency or official may waive part or all of the total fee if:

37 A. The requester is indigent; or

38 B. Release of the public record requested is in the public interest because doing so
39 is likely to contribute significantly to public understanding of the operations or

activities of government and is not primarily in the commercial interest of the requester.

Sec. 4. 1 MRSA §408-A is enacted to read:

§408-A. Timelines

1. Availability; redaction; location; collection. A public record must be made available immediately upon request unless time is required to redact the record so as to allow inspection and copying of only those portions of the record containing information that is a public record or to locate and collect a record that is not in active use or that is in storage.

2. Certification. If a public record is not available immediately, a public access officer shall promptly certify that fact in writing to the requester, provide an explanation for the delay and either provide an opportunity to inspect or copy the public record within 5 business days or mail or e-mail the public record within 5 business days.

3. Large or multiple requests. If a large public record is requested or multiple public records are requested and the public access officer or a person acting on behalf of the agency or official cannot in the exercise of due diligence produce the entire record or multiple records within 5 business days after the request, the public access officer shall provide the portion of the public record or public records when available. The requester may waive this requirement and request to see the public record or public records requested as a whole when available.

4. Estimate. If the cost to comply with a request to inspect or copy a public record is greater than \$100, an estimate must be provided within 3 business days of the request.

5. Failure to comply. Failure to comply with this section may be treated as a denial of a request and is subject to the enforcement provisions of this chapter.

Sec. 5. 1 MRSA §408-B is enacted to read:

§408-B. Inspection by requester

1. Ten business days. A requester shall complete an inspection of a public record within 10 business days after the record is made available for inspection. If the inspection is not completed within the 10-business-day period, a public access officer or a person acting on behalf of the agency or official shall inform the requester that a written request for additional time may be filed with the agency or official that has custody of the public record.

2. Additional periods. An agency or official shall allow an additional 20 business days beyond the period in subsection 1 for a requester to review a public record if the requester filed a written request for additional time with the agency or official or its public access officer or a person acting on behalf of the agency or official. If the inspection is not completed upon the expiration of the additional 20 business days, the public access officer or person acting on behalf of the agency or official shall inform the

1 requester that a 2nd written request for an additional 10 days may be filed with the
2 agency or official that has custody of the public record.

3 **3. Interruption of inspection.** The time allowed for inspection of a public record
4 may be interrupted if the agency or official needs to use the public record. If an agency or
5 official invokes this subsection, the public access officer, no later than 5 business days
6 after the agency or official takes the record back, shall inform the requester in writing the
7 dates that the public record will be available for the inspection to resume. The time
8 allowed for an inspection is tolled during the period in which the public record is being
9 used by the agency or official.

10 **Sec. 6. 1 MRSA §410**, as repealed and replaced by PL 1987, c. 477, §6, is
11 amended to read:

12 **§410. Violations; injunction**

13 For every willful violation of this subchapter, the state government agency or local
14 government entity whose officer or employee committed the violation shall be is liable
15 for a civil violation for which a forfeiture fine of not more than \$500 may be adjudged.

16 The Superior Court may issue an injunction to enforce the provisions of this chapter
17 against any agency or official. A motion for an injunction is privileged in respect to its
18 assignment for hearing and trial over all other actions except writs of habeas corpus and
19 actions brought by the State against individuals.

20 **Sec. 7. 1 MRSA §412**, as amended by PL 2007, c. 576, §2, is further amended to
21 read:

22 **§412. Public records and proceedings training for certain elected officials and**
23 **public access officers**

24 **1. Training required.** ~~Beginning July 1, 2008, an~~ An elected official and a public
25 access officer, subject to this section shall complete a course of training on the
26 requirements of this chapter relating to public records and proceedings. The official or
27 officer shall complete the training not later than the 120th day after the date the elected
28 official takes the oath of office to assume the person's duties as an elected official or the
29 person is designated as a public access officer pursuant to section 413, subsection 1. ~~For~~
30 ~~elected officials subject to this section serving in office on July 1, 2008, the training~~
31 ~~required by this section must be completed by November 1, 2008.~~

32 **2. Training course; minimum requirements.** The training course under subsection
33 1 must be designed to be completed by an official or a public access officer in less than 2
34 hours. At a minimum, the training must include instruction in:

35 A. The general legal requirements of this chapter regarding public records and public
36 proceedings;

37 B. Procedures and requirements regarding complying with a request for a public
38 record under this chapter; and

39 C. Penalties and other consequences for failure to comply with this chapter.

1 An elected official or public access officer meets the training requirements of this section
2 by conducting a thorough review of all the information made available by the State on a
3 publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding
4 specific guidance on how a member of the public can use the law to be a better informed
5 and active participant in open government. To meet the requirements of this subsection,
6 any other training course must include all of this information and may include additional
7 information.

8 **3. Certification of completion.** Upon completion of the training course required
9 under subsection 1, the elected official or public access officer shall make a written or an
10 electronic record attesting to the fact that the training has been completed. The record
11 must identify the training completed and the date of completion. The elected official
12 shall keep the record or file it with the public entity to which the official was elected. A
13 public access officer shall file the record with the agency or official that designated the
14 public access officer.

15 **4. Application.** This section applies to the following elected officials:

16 A. The Governor;

17 B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

18 C. Members of the Legislature elected after November 1, 2008;

19 E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers
20 of probate and budget committee members of county governments;

21 F. Municipal officers, clerks, treasurers, assessors and budget committee members of
22 municipal governments;

23 G. Officials of school units and school boards; and

24 H. Officials of a regional or other political subdivision who, as part of the duties of
25 their offices, exercise executive or legislative powers. For the purposes of this
26 paragraph, "regional or other political subdivision" means an administrative entity or
27 instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a
28 quasi-municipal corporation or special purpose district, including, but not limited to,
29 a water district, sanitary district, hospital district, school district of any type, transit
30 district as defined in Title 30-A, section 3501, subsection 1 or regional transportation
31 corporation as defined in Title 30-A, section 3501, subsection 2.

32 This section also applies to a public access officer designated pursuant to section 413,
33 subsection 1.

34 **Sec. 8. 1 MRSA §413 is enacted to read:**

35 **§413. Public access officer; responsibilities**

36 **1. Designation; responsibility.** Every agency or official shall designate to an
37 existing staff member the responsibility of serving as a public access officer to oversee
38 responses to requests for public records under this chapter. The public access officer
39 shall oversee the prompt response to a request to inspect or copy a public record.

1 2. Training. A public access officer shall complete a course of training on the
2 requirements of this chapter relating to public records and proceedings as described in
3 section 412.

4 3. Purpose; schedule. A public access officer or other person acting on behalf of an
5 agency or official may not inquire into the purpose of a request. A public access officer
6 may inquire as to the schedule or order of inspection or copying of a public record or a
7 portion of a public record under section 408.

8 4. Uniform treatment. A public access officer shall treat all requests for
9 information under this chapter uniformly without regard to the requester's position or
10 occupation, the person on whose behalf the request is made or the status of the requester
11 as a member of the media.

12 5. Comfort and facility. The public access officer shall ensure that a person may
13 inspect a public record in the offices of the agency or official in a manner that provides
14 reasonable comfort and facility for the full exercise of the rights of the public under this
15 chapter.

16 6. Unavailability of public access officer. The unavailability of a public access
17 officer may not delay a response to a request.

18 **Sec. 9. Appropriations and allocations.** The following appropriations and
19 allocations are made.

20 **ATTORNEY GENERAL, DEPARTMENT OF THE**

21 **Administration - Attorney General 0310**

22 Initiative: Provides funds for a part-time Assistant Attorney General position to act as the
23 public access ombudsman and general operating expenses required to carry out the
24 purposes of this Act.

25			
26	GENERAL FUND	2011-12	2012-13
27	POSITIONS - LEGISLATIVE COUNT	0.500	0.500
28	Personal Services	\$62,120	\$65,576
29	All Other	\$5,000	\$5,000
30			
31	GENERAL FUND TOTAL	<u>\$67,120</u>	<u>\$70,576</u>

32 **SUMMARY**

33 This bill increases governmental transparency by enhancing the existing freedom of
34 access laws to provide deadlines for responses to requests for public records, to ensure
35 that requesters can access public records in the format requested and to require the
36 designation of public access officers for every agency and political subdivision.

1 The bill provides funding for an Assistant Attorney General position located in the
2 Office of the Attorney General to act as the public access ombudsman, which is a
3 part-time position.

KEY REFORM #1 - TIMELINES

CURRENT LAW

LD 1465

- NO DEADLINE to acknowledge request
- NO DEADLINE to comply with request
- 5-DAY DEADLINE to deny a request

Request made

↓

Record made available immediately

↓

(if time needed to redact)

↓

Written explanation for delay; 5-day deadline to comply with request

↓

(large or multiple requests requiring more than 5 days)

Portions as available, and/or comply with total request when available

3

\$408. PUBLIC RECORDS AVAILABLE FOR PUBLIC INSPECTION AND COPYING

"Except as otherwise provided by statute, every person has the right to inspect and copy any public record...within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification, but in any case the agency or official shall give a record of the request within a reasonable period of time."

\$409. APPEALS

1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy the record, the person making the request may appeal by the body or agency or official in writing stating the reason for the denial, within 5 working days of the request for inspection by any person.

KEY REFORM #1 - TIMELINES

EXAMPLE: 184 DAYS TO RECEIVE MTA RECORDS

Aug. 4, 2010

Maine Heritage Policy Center sends Freedom of Access Request for payroll and vendor payments data to the Maine Turnpike Authority

Aug. 9, 2010 - 5 days after request

MTA acknowledges request has been received

Sept. 7, 2010 - 34 days after request

Having received no further correspondence from MTA, MHPC staff attorney e-mails MTA asking to advise on status of request

Sept. 10, 2010 - 37 days after request

MTA replies, suggesting it will take 20 hours to complete the request

Jan. 31, 2011 - 180 days after request

Having received no further correspondence from MTA, MHPC staff e-mails MTA asking again to advise on status of request

Feb. 4, 2011 - 184 days after request

MTA finally complies with request

4

TIME FOR TRANSPARENCY

LD 1465: AN ACT TO AMEND THE LAWS GOVERNING FREEDOM OF ACCESS

Sponsored by Sen. Richard Rosen

Presentation to the Maine Right to Know Advisory Committee
Chris Cinquemani, Director of Communications
The Maine Heritage Policy Center

September 1, 2011

BROAD AND DIVERSE SUPPORT

DRAFTED WITH INPUT FROM:

Maine Heritage Policy Center	Maine Freedom of Information Coalition
Maine Civil Liberties Union	Society of Professional Journalists
Maine Press Association	Individual members of the media

30 LEGISLATIVE CO-SPONSORS

*Sen. Alfond (D-Cumberland)	Rep. Hinck (D-Portland)	Rep. Rosen (R-Bucksport)
Rep. Beavers (D-South Berwick)	*Sen. Hobbins (D-York)	Sen. Sherman (R-Aroostook)
Sen. Collins (R-York)	Sen. Katz (R-Kennebec)	Rep. Sirocki (R-Seabrook)
Sen. Diamond (D-Cumberland)	Sen. Langley (R-Hancock)	Sen. Snowe-Mello (R-Androscoggin)
Rep. Dunphy (R-Emden)	Sen. Martin (R-Kennebec)	Rep. Strang Burgess (R-Cumberland)
Rep. Eves (D-North Berwick)	Sen. Mason (R-Androscoggin)	Sen. Thibodeau (R-Waldo)
Sen. Farnham (R-Penobscot)	Sen. McCormick (R-Kennebec)	Rep. Turner (R-Burlington)
Rep. Guerin (R-Glenburn)	Rep. O'Connor (R-Berwick)	Sen. Whittemore (R-Somerset)
Rep. Harvell (R-Farmington)	Rep. Olson (R-Phippsburg)	
*Rep. Hayes (D-Buckfield)	*Sen. Plowman (R-Penobscot)	*Member of Legislative Leadership
Sen. Hill (D-York)	Sen. Rector (R-Knox)	

2

KEY REFORM #2 - FORM

EXAMPLES: FORM REQUESTS IGNORED

Maine Turnpike Authority

- Records requested in electronic spreadsheet form
- MTA questions how records will be used
- Records initially sent as pdf
- Two months to obtain electronic spreadsheet

Standish

- Records requested in electronic spreadsheet form
- Records sent as paper print-out of spreadsheet

Richmond

- Records requested in electronic spreadsheet form
- Records sent as paper print-out of spreadsheet

Bangor

- Records requested in electronic spreadsheet form
- Records sent as Dot Matrix print-out

7

KEY REFORM #1 - TIMELINES

TIMELINES FOR PUBLIC RECORDS REQUESTS IN RIGHT TO KNOW LAWS

Colorado (3 days, +7 days firm)
District of Columbia (15 days, 10 days)
Delaware (15 days, extra time)
Georgia (3 days, extra time)
Hawaii (10 days, +20 days, +5 days)
Idaho (3 days, 10 days firm)
Illinois (5 days, +5 days)
Kansas (3 days, extra time)
Kentucky (3 days, extra time)
Louisiana (3 days firm)
Maryland (30 days)
Massachusetts (10 days)
Michigan (5 days, +10 days firm)
Mississippi (7 days, +14 days or agreed time)
Missouri (3 days, extra time)
Nebraska (4 days, extra time)
Nevada (5 days, extra time)
New Hampshire (5 days, extra time)
New Jersey (7 days)
New Mexico (3 days, +15 days or extra time)

30 Total

#31 - Maine? (5 days, extra time)

5

KEY REFORM #2 - FORM

REQUESTED FORM PROVISIONS IN RIGHT TO KNOW LAWS

Connecticut
Florida
Georgia
Hawaii
Iowa
Mississippi
Missouri
Montana
Nevada
North Carolina
Ohio

Rhode Island
Vermont
Virginia
West Virginia
Wisconsin

16 Total

#17 - Maine?

8

KEY REFORM #2 - FORM

CURRENT LAW

- No mention of form of records

LD 1465

- Requester can request copy of record in any form
- Record provided in requested form if able to be produced in that form
- Requester can pay agency's cost to purchase and install ability to produce record in requested form
- If record cannot be produced in requested form, agency identifies every form in which the record can be provided

6

ADDITIONAL REFORMS

- 3-days notice for public proceedings
- Requests by phone
- Requested records can be mailed or e-mailed
- 3-day deadline to provide cost estimate if more than \$100
- Timelines to inspect public records on site
- Funding for Public Access Ombudsman

11

OTHER IDEAS

- Future technology or data storage purchases must consider ease of access, need to redact confidential information, and prioritize public's right to know.
- Proactively post on agency Web sites as many records/datasets possible.
- Annual reporting from each governmental agency on FOAA requests (i.e. # of requests, # denied, most requested data/records).

12

KEY REFORM #3 – PUBLIC ACCESS OFFICERS

CURRENT LAW	LD 1465
<ul style="list-style-type: none">• No individual accountable to uphold peoples' right to access and oversee requests	<ul style="list-style-type: none">• All governmental agencies/offices subject to FOAA
	<ul style="list-style-type: none">• Responsibilities designated to existing staff member
	<ul style="list-style-type: none">• Undergo same FOAA training as elected officials
	<ul style="list-style-type: none">• Oversee requests and responses to requests
	<ul style="list-style-type: none">• Unavailability of public access officer may not delay response to request

9

KEY REFORM #3 – PUBLIC ACCESS OFFICERS

ACCOUNTABLE INDIVIDUALS PROVISIONS IN RIGHT TO KNOW LAWS

District of Columbia	South Dakota
Illinois	Texas
Kansas	Wisconsin
Massachusetts	
Michigan	
8 Total	

#9 – Maine?

10

LD 1465: AN ACT TO AMEND THE LAWS GOVERNING FREEDOM OF ACCESS

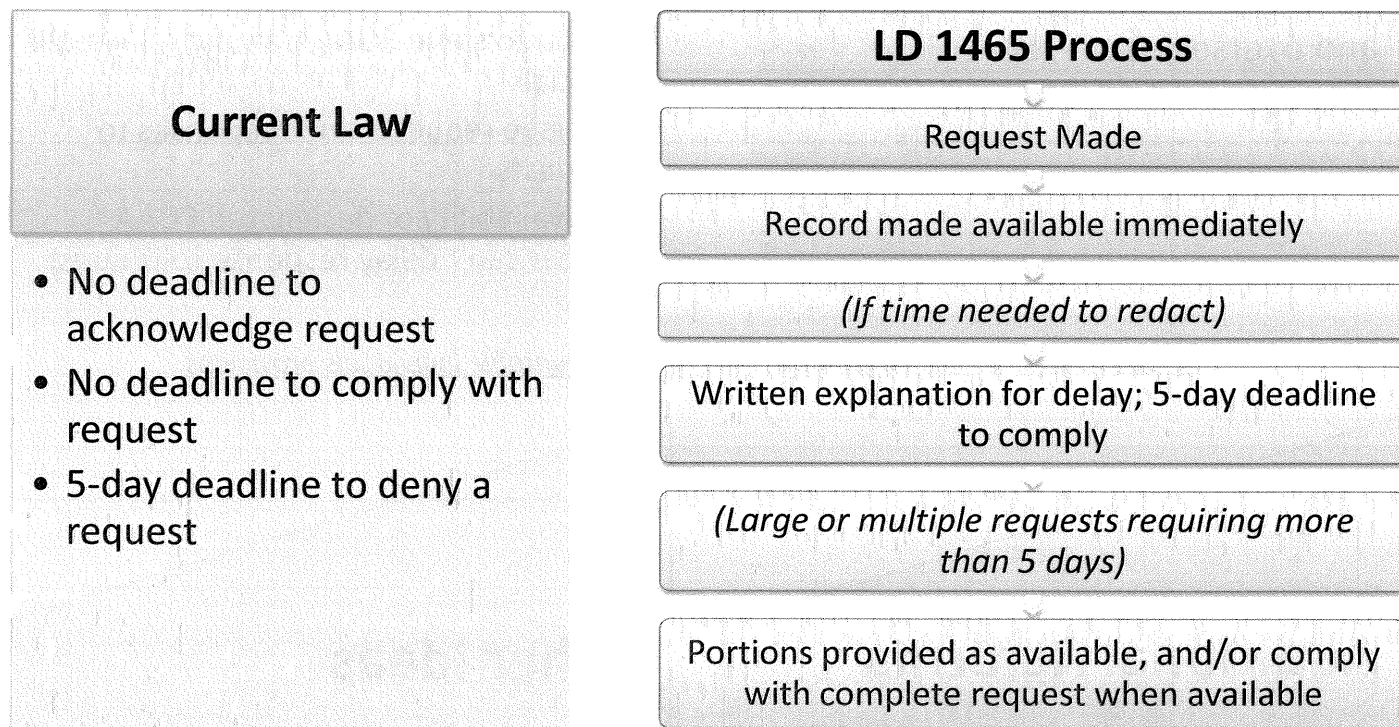
Sponsored by Senator Richard Rosen

Broad support to strengthen Maine's Freedom of Access Law

- MHPC, Maine Civil Liberties Union, Maine Press Association, Maine Freedom of Information Coalition
- 30 Legislative Co-Sponsors, including Legislative Leadership from both parties

Key Reforms:

1) Timelines



*30 states have timelines that government must adhere to when fulfilling public record requests

2) Form

Current Law	LD 1465
<ul style="list-style-type: none">• No mention of form of records	<ul style="list-style-type: none">• Can request record in any form• Record to be provided in requested form if available• Requester can pay cost to produce record in requested form• If can't provide in request form, every form available must be identified

*16 states have requested form provisions in their Right to Know Law, including 3 New England states

LD 1465: AN ACT TO AMEND THE LAWS GOVERNING FREEDOM OF ACCESS

Sponsored by Senator Richard Rosen

3) Public Access Officers

Current Law

- No individual is accountable to uphold peoples' right to access and oversee requests

LD 1465

- FOAA responsibilities designated to existing staff member
- Undergo same FOAA training as elected officials
- Oversee requests and responses to requests
- Unavailability of designated FOAA officer can't delay response to request

*8 states have Right to Know laws that have accountable individuals provisions

Additional Reforms

- 3-day notice for public meeting
- Requests made by phone
- Requested records can be mailed OR e-mailed
- 3-day deadline to provide cost estimate if more than \$100
- **Funding for Public Access Ombudsman**

Other Ideas

- Future technology or data storage purchases must consider ease of access, need to redact confidential information, and prioritize public's right to know.
- **Proactively post on agency web sites as many records/datasets as possible**
- Annual reporting from each governmental agency on FOAA request (# of requests, # denied, most requested records).

Deseret News

Utah lawmakers repeal controversial open records law

Published: Friday, March 25, 2011 4:41 p.m. MDT

SALT LAKE CITY — Utah lawmakers repealed a widely criticized law restricting access to many government records Friday, though not without a tussle between the House and Senate.

The vote, however, doesn't mean changes to the Government Records Access and Management Act or GRAMA aren't coming. Lawmakers intend to draft new legislation in the next few months — this time with public input that Utahns found sorely lacking when the Legislature hurriedly passed HB477 earlier this month.

"Obviously, this one isn't done," said Senate President Michael Waddoups, R-Taylorsville.

The bill largely exempted the Legislature and several forms of electronic communication from GRAMA, allowed for increased fees for records requests and erased language favoring openness.

Lawmakers say they have listened to the voice of the people and want to start with a clean slate.

"It is my opinion that we simply messed up. It was no one's fault but ours," said Sen. Stephen Urquhart, R-St. George.

Gov. Gary Herbert called the Legislature into special session to reconsider the bill after a huge public outcry galvanized the community, bringing together liberals and tea party activists in an effort repeal the law by referendum.

In a statement afterward, the governor said he was pleased legislators responded to the people's will.

"It was the right thing to do as a first step to restore public confidence. As the Legislature's working group re-examines Utah's GRAMA statutes, I am confident all members will work diligently to craft recommendations which protect the public's right to know, protect an individual's legitimate right to privacy, and protect taxpayer dollars," he said.

A 25-member working group organized by GOP House and Senate leadership to consider changes to the open records law met for the first time Wednesday. No formal action was taken as participants — lawmakers, media representatives and other members of the public — voiced their views about GRAMA. The group intends to meet weekly.

Except for brief comments by House Majority Leader Brad Dee and House Minority Leader David Litvak, the House made quick work of HB1001, voting 60-3 to approve the bill that repeals HB477. Reps. Neal Hendrickson, D-West Valley; Mike Noel, R-Kanab, and Curt Webb, R-Logan, voted against the repeal.

Neither lawmakers nor the working group could move forward in a "forthright manner with HB477 hanging on top of everyone's head," Litvak said.

The Senate, after some lengthy debate, voted 19-5 to repeal the law, including amendments to assure public input and asking Herbert to call them into special session by June 24 to consider a new bill. Sens. Margaret Dayton, R-Orem; Mark Madsen, R-Eagle Mountain, Stuart Reid, R-Ogden; Daniel Thatcher, R-West Valley, and Waddoups cast the dissenting votes.

The House, however, rejected the amendments. The Senate ultimately removed those provisions but approved "intent language" calling for the same thing, except without the June deadline.

Senate Democrats were united in the repeal and restoring "sunlight" to government, said Sen. Ross Romero, D-Salt Lake. "We believe it is better to measure twice and cut once," he said.

Waddoups said in an interview afterward that he thinks lawmakers would be inclined to pass a revised GRAMA bill this summer rather than wait until the 2012 Legislature because "January is closer to the election."

House members said there's no need to rush.

"Given the nature of the topic, that date may be too soon. A later date may be more appropriate," said Rep. John Dougall, R-American Fork, sponsor of HB477 said.

Rep. Holly Richardson, R-Pleasant Grove, a member of the GRAMA working group, said she didn't want to be tied down to a specific date. "We are all here to work," she said.

Though Herbert apparently told senators he liked the failed amendments, he did not say whether he would call another special session soon.

During floor debate, senators found themselves in sharp disagreement over whether to repeal the GRAMA bill at all. Some castigated the media for what they said was biased reporting on the issue.

"This was right when we voted for it the first time," said Sen. Daniel Thatcher, R-West Valley.

Waddoups accused the media of pressing lawmakers on how to vote and to declare their votes in advance.

"We have a word for that up here. That word is lobbyist. I believe they crossed the line and became lobbyists this year," the Taylorsville Republican said.

Urquhart said the statute has little to do with the media. "It is the people's window into what we do."

Any attorney for the Utah Media Coalition praised lawmakers for repealing the measure.

"GRAMA is the people's law, and today the people have saved it with this historic vote," said Michael O'Brien, who represents Utah journalists, newspapers and broadcasters.

"We commend the governor and Legislature for fixing the mistake of HB477. As we now discuss ways to improve GRAMA, we must be prudent to preserve the intent and spirit of the law the people have worked so hard to save."

The original bill was rushed through the Legislature in its last week over objections aired in two public hearings. Shortly after the bill passed, a coalition of public interest groups of varying political views banded together to gather enough signatures to repeal the bill by referendum.

Herbert, facing a veto override, agreed to sign the bill if lawmakers would push the implementation date back to July 1 and appoint a working group to examine GRAMA and amend the bill in special session in June. But public protest over changes in the law continued, until Herbert called Friday's special session to repeal HB477 and start over.

First Amendment activist Claire Geddes, speaking at a rally held prior to the special session, said the people have risen up and taken the lead when government leaders failed to act.

"What's really happening here is we're seeing the power of the people," she said. "The public outcry over the passage of HB477 demonstrates how out of touch Utah government is with its people."

Janalee Tobias, a gun rights activist and backer of the petition drive to repeal the bill, said the public anger over the passage of HB477 showed that the pen is mightier than the sword.

"A mouth is more powerful than a Magnum," she said. "A signature is more powerful than a shotgun."

Leaders of Save GRAMA, the citizen referendum drive to overturn HB477, said Friday's repeal means the Legislature recognized the will of the people.

"We declare this a victory, the first, we hope, of many victories," said Steve Maxfield, Save GRAMA

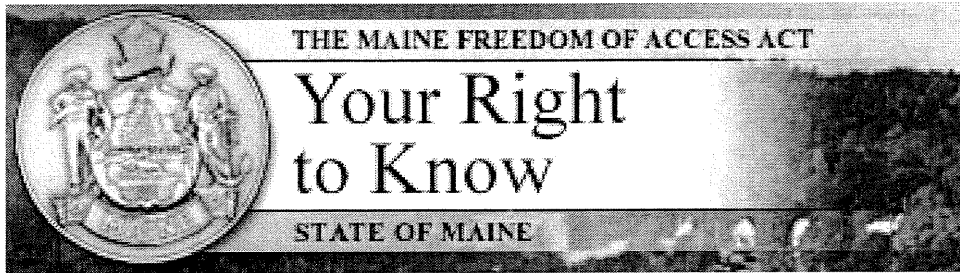
coalition chairman.

Board member Linda Petersen said the Legislature grossly underestimated the electorate's disillusionment over the issue.

"They thought this was a media issue. They thought the only people who would object to HB477 were a few liberals. The people of Utah have shown them they were wrong."

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Frequently Asked Questions (FAQ)

[General Questions](#) | [Public Records](#) | [Public Proceedings](#)

GENERAL QUESTIONS

What is the Freedom of Access Act?

The Freedom of Access Act ("FOAA") is a state statute that is intended to open the government of Maine by guaranteeing access to the "public records" and "public proceedings" of state and local government bodies and agencies.

Are federal agencies covered by the Freedom of Access Act?

No. The Freedom of Access Act does not apply to federal agencies operating in Maine or to federal government records. A similar but different federal statute called the "Freedom of Information Act" applies to the federal government. This federal statute does not apply to state or local government bodies, agencies or officials.

You can find the text of the Freedom of Information Act, 5 U.S.C. § 551 et seq., at: <http://www.usdoj.gov/oip/foiastat.htm> or you can find more general information on the Freedom of Information Act at: http://answers.usa.gov/cgi-bin/gsaict.cfg/php/enduser/stdadp.php?p_faqid=5940

Who enforces the Freedom of Access Act?

Any aggrieved person may appeal to any Superior Court in the state to seek relief for an alleged violation of the Freedom of Access Act. [1 M.R.S.A. § 409 \(1\)](#). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml In addition, the Office of the Attorney General or the District Attorneys may bring an enforcement action seeking penalties if the alleged violation is willful. [1 M.R.S.A. § 410](#).

What are the penalties for failure to comply with the Freedom of Access laws?

A state government agency or local government entity whose officer or employee commits a willful violation of the Freedom of Access laws commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1 M.R.S.A. § 410](#). Under the current law, there are no criminal penalties for failure to comply with a request for public records. It is a Class D crime to intentionally remove, alter, or destroy documents belonging to a state office. [1 M.R.S.A. § 452](#).

Are elected officials required to take training on the Freedom of Access laws?

Yes. Beginning July 1, 2008, elected officials must complete a [course of training](#) on the requirements of the Freedom of Access laws.

Which elected officials are required to take Freedom of Access training?

Elected officials required to complete the training include:

- the Governor
- Attorney General, Secretary of State, Treasurer of State and State Auditor
- Legislators elected after November 1, 2008
- Commissioners, treasurers, district attorneys, registers of deeds, registers of probate and budget committee members of any county
- Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments
- Officials of school units and school boards
- Officials of regional or other political subdivisions, including officials of water districts, sanitary districts, hospital districts, transit districts or regional transportation districts.

What does the training include?

At a minimum, the training must be designed to be completed in less than 2 hours and include instruction in:

- the general legal requirements regarding public records and public proceedings
- the procedures and requirements regarding complying with a request for a public record
- the penalties and other consequences for failure to comply with the law

Elected officials can meet the training requirement by conducting a thorough review of the material in this FAQ section of the State's Freedom of Access website or by completing another training course that includes all of this information but may include additional information.

Do training courses need to be certified by the Right to Know Advisory Committee?

No. Training courses do not need the approval of the Right to Know Advisory Committee, or any other State agency.

How do elected officials certify they have completed the training?

After completing the training, elected officials are required to make a written or electronic record attesting that the training has been completed. The record, which will be available to the public, must be kept by the elected official or filed with the public entity to which the official was elected. A [sample training completion form is available](#) (This file requires the free Adobe Reader).

PUBLIC RECORDS

What is a public record?

The Freedom of Access Act defines "public record" as "any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is

composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business". A number of exceptions are specified. (See the discussion of exemptions below) 1 M.R.S.A. § 402 (3).

Do I have to be a citizen of this state to submit a Freedom of Access Act request for a public record?

No. The Freedom of Access Act provides that "every person" has the right to inspect and copy public records. 1 M.R.S.A. § 408 (1).

How do I make a Freedom of Access Act request for a public record?

See the [How to Make a Request page on this site](#).

Is there a form that must be used to make a Freedom of Access Act request?

No. There are no required forms.

Does my Freedom of Access Act request have to be in writing?

No. The Freedom of Access Act does not require that requests for public records be in writing. However, most bodies and agencies ask individuals to submit requests in writing in order to maintain a record of when the request was received and what records were specifically requested.

What should I say in my request?

In order for the body, agency or official to promptly respond to your request, you should be as specific as possible when describing the records you are seeking. If a particular document is required, it should be identified precisely—preferably by author, date and title. However, a request does not have to be that specific. If you cannot identify a specific record, you should clearly explain the type of records you are seeking, from what timeframe and what subject the records should contain. For example, assume you want to obtain a list of active landfills near your home. A request to the state Department of Environmental Protection asking for "all records on landfills" is very broad and would likely produce volumes of records. The fees for such a request would be very high; the agency would likely find your request too vague and ask that you make it more specific. On the other hand, a request for "all records identifying landfills within 20 miles of 147 Main Street in Augusta" is very specific and the request might fail to produce the information you desire because the agency has no record containing data organized in that exact fashion. You might instead consider requesting any record that identifies "all active landfills in Augusta" or "all active landfills in Kennebec County." It is more likely that a record exists which contains this information. You might also want to explain to the agency exactly what information you hope to learn from the record. In other words, if you are really trying to determine whether any active landfills near your home in Augusta accept only wood waste, this additional explanation may help the agency narrow its search and find a record that meets the exact request.

Does an agency have to acknowledge receipt of my request?

Yes. An agency or official must acknowledge receipt of a request within a reasonable period of time. 1 MRSA § 408 (1).

Can an agency ask me for clarification concerning my request?

Yes. An agency or official may request clarification concerning which public record or public records are being requested. 1 MRSA §408 (1).

When does the agency or official have to make the records available?

The records must be made available "within a reasonable period of time" after the request was made. 1 M.R.S.A. § 408 (1). The agency or official can schedule the time for your inspection, translation and copying of the records during the regular business hours of the agency or official, and at a time that will not delay or inconvenience the regular activities of the agency or official. 1 M.R.S.A. §§ 408 (1) & (2).

Does an agency have to produce records within 5 days of my request?

No. The records that are responsive to a request must be made available "within a reasonable period of time" after the request was made. 1 MRSA § 408 (1). Agencies must respond in writing within 5 working days only if your request is denied in whole or in part. 1 MRSA § 409 (1).

Do I have to go to the agency to inspect the records or can I ask the agency or official to mail me the records?

The Freedom of Access Act only requires the agency or official to make the records available to you for inspection and copying, it does not require the agency or official to mail records. However, depending on the volume of records produced in response to your request, some agencies or officials may be willing to mail copies to you. The agency may charge a reasonable fee to cover the cost of making the copies for you. 1 M.R.S.A. § 408 (1) & (3)(A).

When may a governmental body refuse to release the records I request?

The Freedom of Access Act provides that certain categories of documents are not public records. Included among these are records that have been designated confidential by statute, documents subject to a recognized legal privilege such as the attorney-client privilege or the work-product privilege, records describing security plans or procedures designed to prevent acts of terrorism, medical records, juvenile records, and the personal contact information of public employees contained within records. 1 M.R.S.A. § 402 (3)(A)-(O).

For a list of records or categories of records deemed by statute to be confidential or otherwise not a public record, see the Statutory Exceptions List. While this listing may not be totally complete, it contains the vast majority of exceptions to the Freedom of Access Act.

What happens if a public record holds some information that is open to the public and some information that falls within an exception to the Freedom of Access Act?

Some public records contain a mixture of information that is public and information that is confidential or otherwise not subject to public inspection under the Freedom of Access Act. If the record you requested contains any confidential or excepted information, the custodian will decide if the confidential or excepted information can be adequately redacted or blacked out so that public access can be provided or if public access to the document should be denied.

Does an agency have to explain why it denies access to a public record?

Yes. When an agency denies access to a public record, it must provide the reason for its denial in writing within 5 working days of the date of the Freedom of Access Act request. 1 M.R.S.A. § 409 (1).

What can I do if I believe an agency has unlawfully withheld a public record?

If you are unsatisfied with an agency's decision to withhold access to certain records, you are entitled to appeal, within 5 working days of your receipt of the written notice of denial, to any Superior Court within the state. 1 M.R.S.A. § 409 (1). Superior Courts Directory: http://www.courts.state.me.us/maine_courts/superior/directory.shtml

May a governmental body ask me why I want a certain record?

The Freedom of Access Act does not specifically prohibit agencies or officials from asking why an individual is requesting a public record. However, if asked, the individual is not required to provide a reason for seeking a record, and the agency cannot deny an individual's request based solely on either the individual's refusal to provide a reason or the reason itself. An agency or official may request clarification concerning which public record or public records are being requested. 1 M.R.S.A. § 408 (1).

Can I ask that public reports or other documents be created, summarized or put in a particular format for me?

No. A public officer or agency is not required to prepare reports, summaries, or compilations not in existence on the date of your request.

Similarly, a public officer or agency is not required to produce a record in an alternate format if the record can be made available for public inspection and copying in the format in which it exists. If the record requires translation in order for it to be made available for public inspection and copying, the agency or official must translate the record but can charge you a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

I asked a public official a question about a record, but he/she didn't answer. Is he/she required to answer my question?

No. A public officer or agency is not required under the Freedom of Access Act to explain or answer questions about public records. The Act only requires officials and agencies to make public records available for inspection and copying.

What records must a public officer or agency keep, and how long do they have to keep them?

The Freedom of Access law does not control what records must be retained or for how long they must be retained. Public officers and agencies are required to keep all records made or received or maintained by that officer or agency in accordance with other law or rule. 5 MRSA § 92-A (5) (This file requires the free [Adobe Reader](#)).

How long records must be kept depends on the type of record and the value of the record's content. The [Maine State Archives](#) works with state and local governments to establish rules for the retention and disposition of government records, including the length of time that certain records need to be preserved by the agency before they are either destroyed or sent to the Maine State Archives for long-term or permanent retention.

Are an agency's or official's e-mails public records?

Any record, regardless of the form in which it is maintained by an agency or official, can be a public record. As with any record, if the e-mail is "in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business" and is not deemed confidential or excepted from the Freedom of Access Act, it constitutes a "public record". 1 M.R.S.A. § 402 (3).

Can an agency charge for public records?

There is no initial fee for submitting a Freedom of Access Act request and agencies cannot charge an individual to inspect records. 1 M.R.S.A. § 408 (3)(D). However, agencies can and normally do charge for copying records. Although the Freedom of Access Act does not set standard copying rates, it permits agencies to charge "a reasonable fee to cover the cost of copying". 1 M.R.S.A. § 408 (3)(A).

Agencies and officials may also charge fees for the time spent searching for, retrieving, compiling or redacting confidential information from the requested records. The Act authorizes agencies or officials to charge \$10 per hour after the first hour of staff time per request. 1 M.R.S.A. § 408 (3)(B). Where translation of a record is necessary, the agency or official may also charge a fee to cover the actual cost of translation. 1 M.R.S.A. § 408 (3)(C).

The agency or official must prepare an estimate of the time and cost required to complete a request and if the estimate is greater than \$20, the agency or official must notify the requester before proceeding. The agency may request payment of the costs in advance if the estimated cost exceeds \$100 or if the requester has previously failed to pay a fee properly assessed under the Freedom of Access Act. 1 M.R.S.A. § 408 (4) & (5).

I cannot afford to pay the fees charged by the agency or official to research my request or copy the records. Can I get a waiver?

The agency or official may, but is not required to, waive part or all of the total fee if the requester is indigent, or if release of the public record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester. 1 M.R.S.A. § 408 (6)

Is a public agency or official required under the Freedom of Access Act to honor a "standing request" for information, such as a request that certain reports be sent to me automatically each month?

No. A public body is required to make available for inspection and copying (subject to any applicable exemptions) only those public records that exist on the date of the request. Persons seeking to inspect or obtain copies of public records on a continuing basis are required to make a new request for any additional records sought after the date of the original request.

PUBLIC PROCEEDINGS

What is a public proceeding?

The term "public proceeding" means "the transactions of any functions affecting any or all citizens of the State" by the Maine Legislature and its committees and subcommittees; any board or commission of a state agency or authority including the University of Maine and the Maine Community College System; any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision; the full membership meetings of any association, the membership of which is comprised exclusively of counties, municipalities, school districts, other political or administrative subdivisions, or their boards, commissions, agencies or authorities; and any advisory organization established, authorized or organized by law, resolve or executive order. 1 M.R.S.A. § 402.

What does the law require with regard to public proceedings?

The Freedom of Access Act requires all public proceedings to be open to the public and any person must be permitted to attend. 1 M.R.S.A. § 403.

When does a meeting or gathering of members of a public body or agency require public notice?

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

What kind of notice of public proceedings does the Freedom of Access Act require?

Public notice must be given in ample time to allow public attendance and must be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency. 1 M.R.S.A. § 406.

Can a public body or agency hold an emergency meeting?

Yes. Public notice of an emergency meeting must be provided to local representatives of the media, whenever practicable. The notice must include the time and location of the meeting and be provided by the same (or faster) means used to notify the members of the public body or agency conducting the public proceeding. 1 MRSA § 406. The requirements that the meeting be open to the public, that any person be permitted to attend and that records or minutes of the meeting be made and open for public inspection still apply. 1 MRSA § 403.

Can public bodies or agencies hold a closed meeting?

Yes. Public bodies or agencies are permitted, subject to certain procedural conditions, to hold closed "executive sessions" on specified subjects after a public recorded vote of 3/5 of the members present and voting. 1 M.R.S.A. § 405 (1)-(5).

Can the body or agency conduct all of its business during an executive session?

Generally, no. The content of deliberations during executive sessions is restricted to the matters listed in the Freedom of Access Act, such as: discussions regarding the suspension or expulsion of a student; certain employment actions; the acquisition, use or disposition of public property; consultations between a body and its attorney concerning its legal rights and responsibilities or pending litigation; and discussion of documents that are confidential by statute. In addition, any body or agency subject to the Freedom of Access Act is prohibited from giving final approval to any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session. 1 M.R.S.A. § 405 (2) & (6).

What if I believe a public body or agency conducted improper business during an executive session?

Upon learning of any such action, any person may appeal to any Superior Court in the State. If the court determines the body or agency acted illegally, the action that was taken by the body or agency will be declared to be null and void and the officials responsible will be subject to the penalties provided in the Act. 1 M.R.S.A. § 409 (2). Superior Courts Directory:
http://www.courts.state.me.us/maine_courts/superior/directory.shtml

Can members of a body communicate with one another by email outside of a public proceeding?

There is no legal prohibition against email communication between members of a public body outside of a public proceeding. However, email communication among a quorum of the members of a body used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 MRSA § 402. The underlying purpose of the Freedom of Access law is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 MRSA § 401. Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 MRSA § 403. In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 MRSA § 406.

Members of a body should refrain from the use of email as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. Email is permissible to

communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Email is a public record (likely even when sent using a member's personal computer) if it contains information relating to the transaction of public or governmental business unless the information is designated as confidential or excepted from the definition of a public record. 1 M.R.S.A. § 402, sub-§ 3. As a result, members of a body should be aware that all emails and email attachments relating to the member's participation are likely public records subject to public inspection under the Freedom of Access laws.

Can I record a public proceeding?

Yes. The Freedom of Access Act allows individuals to make written, taped or filmed records of a public proceeding, or to broadcast the proceedings live, provided the action does not interfere with the orderly conduct of the proceedings. The body or agency holding the proceeding can make reasonable rules or regulations to govern these activities so long as the rules or regulations do not defeat the purpose of the Act. 1 M.R.S.A. § 404.

Do members of the public have a right to speak at public meetings under the Freedom of Access Act?

The Freedom of Access Act does not require that an opportunity for public participation be provided at open meetings, although many public bodies or agencies choose to permit public participation. In those instances, the public body or agency can adopt reasonable rules to ensure meetings are conducted in a fair and orderly manner. For example, the body or agency can set a rule that requires the same amount of time be afforded to each person that wants to speak.

Is the public body or agency required to keep running minutes or a record of a public proceeding?

There is no requirement under the Freedom of Access Act that a public body or agency keep running minutes during all public proceedings. The Act does require, however, that public bodies and agencies keep a written record of every decision that involves the conditional approval or denial of an application, license, certificate or permit, and every decision that involves the dismissal or refusal to renew the contract of any public official, employee or appointee. 1 M.R.S.A. § 407 (1) & (2).

If the public proceeding is an "adjudicatory proceeding" as defined in the Maine Administrative Procedure Act, the agency is required to compile a record that complies with statutory specifications, including a recording in a form susceptible of transcription. 5 M.R.S.A. §§ 8002 (1) and 9059.

Is the agency or body required to make the record or minutes of a public proceeding available to the public?

Yes. Any legally required record or minutes of a public proceeding must be made promptly and shall be open to public inspection. In addition, every agency is required to make a written record of any decision that involves conditional approval or denial of any application, license, certificate or other type of permit and to make those decisions publicly available, 1 M.R.S.A. §§ 403, 407; 5 M.R.S.A. § 9059 (3).



Paul R. LePage
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

14 July 2011

Right to Know Advisory Committee
State House
Augusta, ME

Dear Members of the Committee:

I want to thank you for your service to the People of the State of Maine. An open government is an honest government. Transparency is important and I believe Mainers are better off because of it.

However, there are two concerns I have that I would like the committee to look at during their review. First, we need to clarify the parameters on what really constitutes government business. We have received Freedom of Access Act requests for all grocery receipts from the Blaine House. The staff of the Blaine House conducts the shopping – it is not something I involve myself in. I understand that taxpayers have a legitimate right to know the amount of their money being spent in their house but the intimate details of our diet goes far beyond funds and into the private details of my family's life.

Second, I believe that certain people are abusing our Freedom of Access Act for political purposes. My office has received a number of incredibly broad requests that have taken hours and hours of staff time. We run the office with a very small number of staff. In fact, from what we have learned at National Governors' Association meetings, we believe it is the smallest Governor's staff in the country. While my team has diligently responded to these requests, none of the information has actually been made public by the requestor. They were made simply to gum up the work of my office and prevent us from moving initiatives forward. The \$10.00 an hour rate was added in 2003 and has not been increased since then. I hope the committee will look at the statutory rate as well as ways to combat abuse going forward.

Please do not hesitate to contact my office if you have questions on these concerns. I know we can make our access laws even better to prevent some of the abuses that have come to light lately. Thank you for your service on this important committee.

Sincerely,

Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

FOA LAW	EXPLANATION	INTERPRETATION AND COMMENTS
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**TITLE 1
GENERAL PROVISIONS**

**CHAPTER 13
PUBLIC RECORDS AND PROCEEDINGS**

**SUBCHAPTER 1
FREEDOM OF ACCESS**

§401. Declaration of public policy; rules of construction

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

Declaration of public policy

- Reason for public proceedings is to aid in the people's business
- Actions be taken openly
- Records open
- Deliberations open
- Clandestine meetings on private property without notice not be used to defeat purposes

- Party alleging violation of FOA has burden of producing evidence that Act violated¹
- The Act's underlying purposes and policies favor disclosure²

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

- New 2011

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

Liberally construe and apply to promote underlying purposes and policies

- Interpretation of the Freedom of Access laws is a matter of law that the Supreme Judicial Court reviews de novo³

§402. Definitions

1. Conditional approval. Approval of an application or granting of a license, certificate or any other type of permit upon conditions not otherwise specifically required by the statute, ordinance or regulation pursuant to which the approval or granting is issued.

¹ Chase et al. v. Town of Machiasport et al., 1998 ME 260, 721 A.2d 636.

² Bangor Historic Track, Inc. v. Department of Agriculture, 2003 ME 140, 837 A.2d 129.

³ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

FOA section by section

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<p>1-A. Legislative subcommittee. “Legislative subcommittee” means 3 or more Legislators from a legislative committee appointed for the purpose of conducting legislative business on behalf of the committee.</p>	<p><i>Legislative subcommittee</i> must consist of at least 3 members and be appointed for the purpose of conducting legislative business on behalf of the committee</p>	
<p>2. Public proceedings. The term “public proceedings” as used in this subchapter means the transactions of any functions affecting any or all citizens of the State by any of the following:</p>	<p><i>Public proceeding</i>: transactions of any functions affecting any or all citizens of the State by listed entities</p>	
<p>A. The Legislature of Maine and its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Legislature and committees and subcommittees 	
<p>B. Any board or commission of any state agency or authority, the Board of Trustees of the University of Maine System and any of its committees and subcommittees, the Board of Trustees of the Maine Maritime Academy and any of its committees and subcommittees, the Board of Trustees of the Maine Technical College System and any of its committees and subcommittees;</p>	<ul style="list-style-type: none"> • Any board or commission of any state agency or authority • Boards of trustees of state educational institutions and their committees and subcommittees 	<ul style="list-style-type: none"> • Hospital Administrative District subject to FOA laws⁴ • “Special civil service study committee” of municipality subject to FOA laws⁵ • Court considers four factors when evaluating whether an entity is subject to the Freedom of Access laws: (1) whether the entity is performing a governmental function; (2) whether the funding of an entity is governmental; (3) the extent of governmental involvement or control; and (4) whether the entity was created by private or legislative action⁶
<p>C. Any board, commission, agency or authority of any county, municipality, school district or any regional or other political or administrative subdivision;</p>	<ul style="list-style-type: none"> • Board, commission agency, authority of political or administrative subdivision 	<ul style="list-style-type: none"> • Local school boards subject to FOA laws⁷ • Indian tribes when acting in their municipal capacities are subject state laws affecting municipal governments, including

⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

⁵ Lewiston Daily Sun, Inc. v. City of Auburn, 544 A.2d 335 (ME 1988).

⁶ Dow v. Caribou Chamber of Commerce and Industry, 2005 ME 113, 884 A.2d 667.

⁷ Marxsen v. Board of Directors, M.S.A.D. No. 5, 591 A.2d 867 (ME 1991).

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		FOA laws ⁸
		<ul style="list-style-type: none"> A tribal reservation was acting in its business capacity, rather than its municipal capacity when it entered into lease of tribal land with developer of liquefied natural gas facility. The tribe has more autonomy than a town in light of provisions of Act to Implement Maine Indian Claims Settlement.⁹
D. The full membership meetings of any association, the membership of which is composed exclusively of counties, municipalities, school administrative units or other political or administrative subdivisions; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;	<ul style="list-style-type: none"> Full membership meetings of associations of political or administrative subdivisions 	
E. The board of directors of a nonprofit, nonstock private corporation that provides statewide noncommercial public broadcasting services and any of its committees and subcommittees;	<ul style="list-style-type: none"> Maine Public Broadcasting Corporation 	
F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and	<ul style="list-style-type: none"> Advisory/study commissions set up by Legislature or by Executive Order UNLESS the law, resolve or EO specifically exempts from FOA laws 	
G. The committee meetings, subcommittee meetings and full membership meetings of any association that: (1) Promotes, organizes or regulates	<ul style="list-style-type: none"> Statewide interscholastic organizations that receive funding from public or private 	

⁸ Great Northern Paper, Inc. v. Penobscot Nation, 2001 ME 68, 770 A.2d 574, cert. denied 534 U.S. 1019.

⁹ Winifred B. French Corp. v. Pleasant Point Passamaquoddy Reservation, 2006 ME 53, 896 A.2d 950.

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<p>statewide interscholastic activities in public schools or in both public and private schools; and</p> <p>(2) Receives its funding from the public and private school members, either through membership dues or fees collected from those schools based on the number of participants of those schools in interscholastic activities.</p> <p>This paragraph applies to only those meetings pertaining to interscholastic sports and does not apply to any meeting or any portion of any meeting the subject of which is limited to personnel issues, allegations of interscholastic athletic rule violations by member schools, administrators, coaches or student athletes or the eligibility of an individual student athlete or coach.</p>	<p>schools and are meeting in regard to interscholastic activities.</p> <ul style="list-style-type: none"> It does not apply to such meetings in which the subject is limited to personnel issues, allegations of interscholastic athletic rule violations, or student athlete or coach eligibility. 	
<p>3. Public records. The term "public records" means any written, printed or graphic matter or any mechanical or electronic data compilation from which information can be obtained, directly or after translation into a form susceptible of visual or aural comprehension, that is in the possession or custody of an agency or public official of this State or any of its political subdivisions, or is in the possession or custody of an association, the membership of which is composed exclusively of one or more of any of these entities, and has been received or prepared for use in connection with the transaction of public or governmental business or contains information relating to the transaction of public or governmental business, except:</p>	<p>Public records defined</p> <ul style="list-style-type: none"> Written, printed, graphic, mechanical or electronic In possession or custody of agency, official or association Received or prepared for use in connection with the transaction of public or governmental business OR contains info relating to the transaction of public or governmental business EXCEPTIONS: 	<ul style="list-style-type: none"> Corollary to FOA laws liberal construction is necessarily strict construction of any exceptions to public disclosure¹⁰ The records of an uncompensated, advisory group created by State officials and acting without legislative mandate to review alleged improprieties are not public records. Courts look at the function the entity performs in evaluating whether an entity or individual, individually or collectively, qualifies as "an agency or public official."¹¹
<p>A. Records that have been designated confidential by statute;</p>	<ul style="list-style-type: none"> Designated confidential by statute (see other statutes) 	<ul style="list-style-type: none"> The plain language of the corporation statute does not provide that specific document is confidential,

¹⁰ Guy Gannett Publishing Co. v. University of Maine et al., 555 A.2d 470 (ME 1989).

¹¹ Moore v. Abbott, 2008 ME 100, 952 A.2d 980.

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		<p>nor does the statute implicitly require salary information supplied to the Superintendent of Insurance to be confidential¹²</p> <ul style="list-style-type: none"> The location of a municipal employee personnel record has no bearing on its protected status under statute (30-A MRSA §2702(1)(B)(5)).¹³
<p>B. Records that would be within the scope of a privilege against discovery or use as evidence recognized by the courts of this State in civil or criminal trials if the records or inspection thereof were sought in the course of a court proceeding;</p>	<ul style="list-style-type: none"> Within scope of a privilege against discovery or use in civil or criminal trials 	<ul style="list-style-type: none"> Compensation records of hospital district's management employees not "trade secrets"¹⁴ "Work product" Privilege against self-incrimination Record subject to a court-issued protective order¹⁵ Compensation records of insurer's board of directors and senior management not "trade secrets"¹⁶
<p>C. Legislative papers and reports until signed and publicly distributed in accordance with legislative rules, and records, working papers, drafts and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the legislative session or sessions in which the papers or reports are prepared or considered or to which the paper or report is carried over;</p>	<ul style="list-style-type: none"> Legislative papers during the legislative session until signed and publicly distributed Working papers of legislators and staff for the session or sessions 	<ul style="list-style-type: none"> The attorney-client privilege does not protect communications in litigation between adverse parties on opposite sides of the bargaining table. The parties did not have a common interest merely because they are willing to negotiate a settlement.¹⁷
C-1. Information contained in a		<ul style="list-style-type: none"> New 2011

¹² Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

¹³ S. Portland Police Patrol Ass'n v. City of S. Portland, 2006 ME 55, 896 A.2d 960.

¹⁴ Town of Burlington v. Hospital Administrative District No. 1 et al., 2001 ME 59, 769 A.2d 857.

¹⁵ Bangor Publishing Co. v. Town of Bucksport, 682 A.2d 227 (ME 1996).

¹⁶ Medical Mutual Insurance Co. of Maine v. Bureau of Insurance, 2005 ME 12.

¹⁷ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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<p>communication between a constituent and an elected official if the information:</p> <p>(1) Is of a personal nature, consisting of:</p> <p>(a) An individual's medical information of any kind, including information pertaining to diagnosis or treatment of mental or emotional disorders;</p> <p>(b) Credit or financial information;</p> <p>(c) Information pertaining to the personal history, general character or conduct of the constituent or any member of the constituent's immediate family;</p> <p>(d) Complaints, charges of misconduct, replies to complaints or charges of misconduct or memoranda or other materials pertaining to disciplinary action; or</p> <p>(e) An individual's social security number; or</p> <p>(2) Would be confidential if it were in the possession of another public agency or official;</p>		
<p>D. Material prepared for and used specifically and exclusively in preparation for negotiations, including the development of bargaining proposals to be made and the analysis of proposals received, by a public employer in collective bargaining with its employees and their designated representatives;</p>	<ul style="list-style-type: none"> Public employer labor negotiation materials 	
<p>E. Records, working papers, interoffice and intraoffice memoranda used by or prepared for faculty and administrative committees of the Maine Maritime Academy, the Maine Technical College System and the University of Maine System. The provisions of this paragraph do not apply to the boards of trustees and the committees and subcommittees of those boards, which are referred to in subsection 2, paragraph B;</p>	<ul style="list-style-type: none"> Faculty and administrative records of state educational institutions, other than boards of trustees 	
<p>F. Records that would be confidential if</p>	<ul style="list-style-type: none"> Otherwise confidential 	

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they were in the possession or custody of an agency or public official of the State or any of its political or administrative subdivisions are confidential if those records are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

but in the hands of association

G. Materials related to the development of positions on legislation or materials that are related to insurance or insurance-like protection or services which are in the possession of an association, the membership of which is composed exclusively of one or more political or administrative subdivisions of the State; of boards, commissions, agencies or authorities of any such subdivisions; or of any combination of any of these entities;

- Materials related to legislative positions or insurance in the hands of association of political or administrative subdivisions of the State

H. Medical records and reports of municipal ambulance and rescue units and other emergency medical service units, except that such records and reports must be available upon request to law enforcement officers investigating criminal conduct;

- Medical records and reports of municipal rescue and emergency medical services, except available to law enforcement in criminal investigations

I. Juvenile records and reports of municipal fire departments regarding the investigation and family background of a juvenile fire setter;

- Juvenile fire starter records

J. Working papers, including records, drafts and interoffice and intraoffice memoranda, used or maintained by any advisory organization covered by subsection 2, paragraph F, or any member or staff of that organization during the existence of the advisory organization. Working papers are public records if distributed by a member or in a public meeting of the advisory organization;

- Advisory/study commission working papers

K. Personally identifying information concerning minors that is obtained or maintained by a municipality in providing recreational or nonmandatory

- Personally identifying information concerning minors collected/maintained by

- Sections of an independent report of a school employment controversy must be redacted if they

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educational programs or services, if the municipality has enacted an ordinance that specifies the circumstances in which the information will be withheld from disclosure. This paragraph does not apply to records governed by Title 20-A, section 6001 and does not supersede Title 20-A, section 6001-A;	municipality for recreational and nonmandatory educational services and programs IF ordinance adopted	touch upon the personal history, general character or conduct of an employee or an employee's immediate family (20-A MRSA §6101(2)(B)(5)). ¹⁸
L. Records describing security plans, security procedures or risk assessments prepared specifically for the purpose of preventing or preparing for acts of terrorism, but only to the extent that release of information contained in the record could reasonably be expected to jeopardize the physical safety of government personnel or the public. Information contained in records covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure. For purposes of this paragraph, "terrorism" means conduct that is designed to cause serious bodily injury or substantial risk of bodily injury to multiple persons, substantial damage to multiple structures whether occupied or unoccupied or substantial physical damage sufficient to disrupt the normal functioning of a critical infrastructure;	<ul style="list-style-type: none"> Security plans, security procedures, risk assessments to prepare/ prevent terrorism if expected to jeopardize physical safety of public personnel. Available to Legislature or municipal officials if further protect from disclosure 	
M. Records or information describing the architecture, design, access authentication, encryption or security of information technology infrastructure and systems. Records or information covered by this paragraph may be disclosed to the Legislature or, in the case of a political or administrative subdivision, to municipal officials or board members under conditions that protect the information from further disclosure;	<ul style="list-style-type: none"> Information technology infrastructure information 	
N. Social security numbers;	<ul style="list-style-type: none"> Social Security Numbers 	<ul style="list-style-type: none"> Amended 2011 - see also new ¶R (was limited to SSNs in possession of IF&W)

¹⁸ Cyr v. Madawaska School Dept., 2007 ME 26, 916 A.2d 967.

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O. Personal contact information concerning public employees, except when that information is public pursuant to other law. For the purposes of this paragraph:

(1) "Personal contact information" means home address, home telephone number, home facsimile number, home e-mail address and personal cellular telephone number and personal pager number; and

(2) "Public employee" means an employee as defined in Title 14, section 8102, subsection 1, except that "public employee" does not include elected officials;

- Personal contact information for certain public employees

P. Geographical information regarding recreational trails that are located on private land that are authorized voluntarily as such by the landowner with no public deed or guaranteed right of public access, unless the landowner authorizes the release of the information;

- Geographical information of recreational trails located on private land, unless landowner authorizes release

Q. Security plans, staffing plans, security procedures, architectural drawings or risk assessments prepared for emergency events that are prepared for or by or kept in the custody of the Department of Corrections or a county jail if there is a reasonable possibility that public release or inspection of the records would endanger the life or physical safety of any individual or disclose security plans and procedures not generally known by the public. Information contained in records covered by this paragraph may be disclosed to state and county officials if necessary to carry out the duties of the officials, the Department of Corrections or members of the State Board of Corrections under conditions that protect the information from further disclosure; and

- Department of Corrections or county jail security plans, staffing plans, security procedures or risk assessments prepared for emergency events if the records would endanger one's life or safety. Information in these security plans and procedures can be disclosed to state and county officials if necessary to carry out duties.

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R. Social security numbers in the possession of the Secretary of State.		• New 2011 - see ¶N
<p>3-A. Public records further defined. "Public records" also includes the following criminal justice agency records:</p> <p>A. Records relating to prisoner furloughs to the extent they pertain to a prisoner's identity, conviction data, address of furlough and dates of furlough;</p> <p>B. Records relating to out-of-state adult probationer or parolee supervision to the extent they pertain to a probationer's or parolee's identity, conviction data, address of residence and dates of supervision; and</p> <p>C. Records to the extent they pertain to a prisoner's, adult probationer's or parolee's identity, conviction data and current address or location, unless the Commissioner of Corrections determines that it would be detrimental to the welfare of a client to disclose the information.</p>	<ul style="list-style-type: none"> • More public records: • Public • Public • Not public: Prisoner's, adult probationer's or parolee's info when Commissioner of Corrections determines detrimental to welfare of a client to disclose 	
<p>4. Public records of interscholastic athletic organizations. Any records or minutes of meetings under subsection 2, paragraph G are public records.</p>		
<p>§402-A. Public records defined (REPEALED)</p>	(now part of §402)	
<p>§403. Meetings to be open to public; record of meetings</p> <p>1. Proceedings open to public. Except as otherwise provided by statute or by section 405, all public proceedings must be open to the public and any person must be permitted to attend a public proceeding.</p>	<p>Public proceedings open to public unless</p> <ul style="list-style-type: none"> • Otherwise provided by statute • Authorized executive session pursuant to §405 <p>Required record/minutes open to public inspection</p>	
<p>2. Record of public proceedings. Unless otherwise provided by law, a record of each public proceeding for which notice is required under section 406 must be made</p>		• New 2011

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within a reasonable period of time after the proceeding and must be open to public inspection. At a minimum, the record must include:		
A. The date, time and place of the public proceeding;		
B. The members of the body holding the public proceeding recorded as either present or absent; and		
C. All motions and votes taken, by individual member, if there is a roll call.		
3. Audio or video recording. An audio, video or other electronic recording of a public proceeding satisfies the requirements of subsection 2.		• New 2011
4. Maintenance of record. Record management requirements and retention schedules adopted under Title 5, chapter 6 apply to records required under this section.		• New 2011
5. Validity of action. The validity of any action taken in a public proceeding is not affected by the failure to make or maintain a record as required by this section.		• New 2011
6. Advisory bodies exempt from record requirements. Subsection 2 does not apply to advisory bodies that make recommendations but have no decision-making authority.		• New 2011

§404. Recorded or live broadcasts authorized

In order to facilitate the public policy so declared by the Legislature of opening the public's business to public scrutiny, all persons shall be entitled to attend public proceedings and to make written, taped or filmed records of the proceedings, or to live broadcast the same, provided the writing, taping, filming or broadcasting does not interfere with the orderly conduct of proceedings. The body or agency holding the public proceedings may make reasonable rules and regulations governing these

Writing, taping, filming, live broadcasts authorized if does not interfere with orderly conduct of proceedings

- Unemployment Insurance Commission proceedings not open to the public so no right to independently record proceeding¹⁹

¹⁹ Martin v. Unemployment Insurance Commission, 1998 ME 271, 723 A.2d 412.

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activities, so long as these rules or regulations do not defeat the purpose of this subchapter.		
§404-A. Decisions (REPEALED)	(see now §407)	
§405. Executive sessions		
Those bodies or agencies falling within this subchapter may hold executive sessions subject to the following conditions.	Executive sessions may be held subject to the following:	
<p>1. Not to defeat purposes of subchapter. These sessions may not be used to defeat the purposes of this subchapter as stated in section 401.</p> <p>2. Final approval of certain items prohibited. An ordinance, order, rule, resolution, regulation, contract, appointment or other official action may not be finally approved at executive session.</p> <p>3. Procedure for calling of executive session. An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.</p> <p>4. Motion contents. A motion to go into executive session must indicate the precise nature of the business of the executive session and include a citation of one or more sources of statutory or other authority that permits an executive session for that business. Failure to state all authorities justifying the executive session does not constitute a violation of this subchapter if one or more of the authorities are accurately cited in the motion. An inaccurate citation of authority for an executive session does not violate this subchapter if valid authority that permits the executive session exists and the failure to cite the valid authority was inadvertent.</p>	<ul style="list-style-type: none"> Not to defeat purposes of FOA Not to finally approve an ordinance, order, rule, resolution, regulation, contract, appointment or other official action Must have 3/5s of the vote of the members present and voting The precise nature of the business to be conducted in executive session must be part of the motion 	<ul style="list-style-type: none"> Employee whose contract was not renewed by school committee was not entitled to relief on ground that committee discussed the nonrenewal in executive sessions where the vote to refuse to extend or renew the contract was made in public meeting attended by employee and her counsel²⁰ Record clearly established that Board of Selectmen, before going into executive session to discuss pending litigation, stated that the session was for purposes of receiving from the town's attorney updated status on that litigation, thereby complying with law²¹

²⁰ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

²¹ Vella v. Town of Camden, 677 A.2d 1051 (ME 1996).

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<p>5. Matters not contained in motion prohibited. Matters other than those identified in the motion to go into executive session may not be considered in that particular executive session.</p>	<ul style="list-style-type: none"> Motions not contained in the motion are prohibited 	
<p>6. Permitted deliberation. Deliberations on only the following matters may be conducted during an executive session:</p>	<p>Only the following deliberations may be conducted during an executive session:</p>	<ul style="list-style-type: none"> Public body charged with violating FOA laws during executive session has burden of proving that its actions during executive session complied with FOA laws²² Any statutory exceptions to the requirement that deliberations be public must be narrowly construed²³
<p>A. Discussion or consideration of the employment, appointment, assignment, duties, promotion, demotion, compensation, evaluation, disciplining, resignation or dismissal of an individual or group of public officials, appointees or employees of the body or agency or the investigation or hearing of charges or complaints against a person or person or persons subject to the following conditions:</p>	<ul style="list-style-type: none"> Discussion of employment issues, subject to the following limitations 	
<p>(1) An executive session may be held only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy would be violated;</p>	<ul style="list-style-type: none"> Only if public discussion could be reasonably expected to cause damage to the reputation or the individual's right to privacy 	<ul style="list-style-type: none"> The time for a "reasonable" expectation of damage to the reputation of an employee to be determined is before the executive session is conducted.²⁴
<p>(2) Any person charged or investigated shall be permitted to be present at an executive session if he so desires;</p>	<ul style="list-style-type: none"> The individual can choose to be present 	
<p>(3) Any person charged or investigated may request in writing that the investigation or hearing of charges or complaints</p>	<ul style="list-style-type: none"> If the individual requests in writing that the proceeding be open to the public, the 	

²² Underwood v. City of Presque Isle et al., 715 A.2d 148 (ME 1998).

²³ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

²⁴ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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<p>against him be conducted in open session. A request, if made to the agency, must be honored; and</p> <p>(4) Any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.</p>	<p>agency must open the proceeding; and</p> <ul style="list-style-type: none"> The person filing the complaint may choose to be present 	
<p>This paragraph does not apply to discussion of a budget or budget proposal;</p>	<ul style="list-style-type: none"> This paragraph cannot be used to discuss budget issues in executive session. 	<ul style="list-style-type: none"> Questions asked of employees about fiscal matters during executive session do not amount to discussions of the budget or budget deliberations.²⁵
<p>B. Discussion or consideration by a school board of suspension or expulsion of a public school student or a student at a private school, the cost of whose education is paid from public funds, as long as:</p>	<p>A school board's discussion of the suspension or expulsion of a student, with the following restriction</p>	
<p>(1) The student and legal counsel and, if the student be a minor, the student's parents or legal guardians are permitted to be present at an executive session if the student, parents or guardians so desire.</p>	<ul style="list-style-type: none"> The student, parents/guardians, legal counsel may choose to be present 	
<p>C. Discussion or consideration of the condition, acquisition or the use of real or personal property permanently attached to real property or interests therein or disposition of publicly held property or economic development only if premature disclosures of the information would prejudice the competitive or bargaining position of the body or agency;</p>	<p>Discussion of property issues that would prejudice the competitive or bargaining position of the public body</p>	
<p>D. Discussion of labor contracts and proposals and meetings between a public agency and its negotiators. The parties must be named before the body or agency may go into executive session. Negotiations between the representatives</p>	<p>Negotiations between a public employer and public employees</p>	

²⁵ Blethen Maine Newspapers, Inc. v. Portland School Committee, 2008 Me 69, 947 A.2d 479.

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of a public employer and public employees may be open to the public if both parties agree to conduct negotiations in open sessions;		
E. Consultations between a body or agency and its attorney concerning the legal rights and duties of the body or agency, pending or contemplated litigation, settlement offers and matters where the duties of the public body's or agency's counsel to the attorney's client pursuant to the code of professional responsibility clearly conflict with this subchapter or where premature general public knowledge would clearly place the State, municipality or other public agency or person at a substantial disadvantage.	Consultations between a public body and its attorney concerning pending or contemplated litigation, matters that are confidential under the Maine Code of Professional Responsibility, or matters that would clearly place the public body at a substantial disadvantage	<ul style="list-style-type: none"> The mere presence of an attorney cannot be used to circumvent the open meeting requirement by invocation of attorney consultation exception²⁶
F. Discussions of information contained in records made, maintained or received by a body or agency when access by the general public to those records is prohibited by statute;	Discussion of records made confidential by statute	
G. Discussion or approval of the content of examinations administered by a body or agency for licensing, permitting or employment purposes; consultation between a body or agency and any entity that provides examination services to that body or agency regarding the content of an examination; and review of examinations with the person examined; and	Discussions of professional licensing decisions	
H. Consultations between municipal officers and a code enforcement officer representing the municipality pursuant to Title 30-A, section 4452, subsection 1, paragraph C in the prosecution of an enforcement matter pending in District Court when the consultation relates to that pending enforcement matter.	Discussions with municipal officers and code enforcement officer about enforcement of land use laws and municipal ordinances when the CEO is representing the municipality in court. Similar to attorney-client provision in paragraph E without the requirement that CEO be an attorney	
§405-A. Recorded or live broadcasts authorized (REPEALED)	(see now §404)	

²⁶ Underwood v. City of Presque Isle, 715 A.2d 148 (ME 1998).

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§405-B. Appeals (REPEALED)

(see now §409)

§ 405-C. Appeals from actions (REPEALED)

(see now §409)

§406. Public notice

Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons. This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

- Notice required if agency or body consists of at least 3 persons
- Timing: ample time to allow public attendance
- Manner: reasonably calculated to notify the general public in the jurisdiction served by the public body
- Emergency meeting: notify representatives of local media whenever practical. By same or faster means

- One day notice of planning board's additional meeting sufficient under the circumstances²⁷

§407. Decisions

1. Conditional approval or denial.

Every agency shall make a written record of every decision involving the conditional approval or denial of an application, license, certificate or any other type of permit. The agency shall set forth in the record the reason or reasons for its decision and make finding of the fact, in writing, sufficient to apprise the applicant and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.

- Written record of conditional approval or denial
 - Reason/reasons
 - Findings of fact

- FOA laws require agency to set out its findings with a level of specificity that is sufficient to apprise the applicant and any interested member of the public of the basis of the decision²⁸
- When local agency conditionally approves or denies a permit, the agency must make findings of fact adequate to indicate the basis for the decision and to allow meaningful judicial review²⁹

²⁷ Crispin et al. v. Town of Scarborough et al., 1999 ME 112, 736 A.2d 241.

²⁸ Yusem v. Town of Raymond, 2001 ME 61, 769 A.2d 865.

²⁹ Carroll v. Town of Rockport, 2003 ME 135, 837 A.2d 148.

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<p>2. Dismissal or refusal to renew contract. Every agency shall make a written record of every decision involving the dismissal or the refusal to renew the contract of any public official, employee or appointee. The agency shall, except in case of probationary employees, set forth in the record the reason or reasons for its decision and make findings of fact, in writing, sufficient to apprise the individual concerned and any interested member of the public of the basis for the decision. A written record or a copy thereof shall be kept by the agency and made available to any interested member of the public who may wish to review it.</p>	<ul style="list-style-type: none"> • Written record of dismissal or refusal to renew a contract of official, employee, appointee • Reason/reasons • Findings of fact 	<ul style="list-style-type: none"> • The Personnel Committee of a municipality is not required to vote as to each individual reason for termination of an employee as long as the decision included specific findings of fact and conclusions.³⁰
<p>§408. Public records available for public inspection and copying</p>		
<p>1. Right to inspect and copy. Except as otherwise provided by statute, every person has the right to inspect and copy any public record during the regular business hours of the agency or official having custody of the public record within a reasonable period of time after making a request to inspect or copy the public record. An agency or official may request clarification concerning which public record or public records are being requested, but in any case the agency or official shall acknowledge receipt of the request within a reasonable period of time.</p>	<ul style="list-style-type: none"> • Every person • Right to inspect and copy • During regular business hours • Within a reasonable period of time after request 	<ul style="list-style-type: none"> • When person requests information that falls within FOA laws' disclosure requirements, and governmental entity knows that it has particular records containing that information, entity must at least inform requesting party that material is available and that the requesting party may come in and "inspect and copy" the information sought³¹
<p>2. Inspection, translation and copying scheduled. Inspection, translation and copying may be scheduled to occur at such time as will not delay or inconvenience the regular activities of the agency or official having custody of the public record sought.</p>	<ul style="list-style-type: none"> • Translation, inspection and copying scheduled to not delay or inconvenience regular activities • Cost of copying paid by requestor 	
<p>3. Payment of costs. Except as otherwise specifically provided by law or court order, an agency or official having custody of a public record may charge fees as follows.</p>	<ul style="list-style-type: none"> • Reasonable fee • Actual cost of searching for, retrieving and compiling of max of \$10/hour after first hour • "Compiling" includes 	
<p>A. The agency or official may charge a reasonable fee to cover the cost of copying.</p>		
<p>B. The agency or official may charge a</p>		

³⁰ Quintal v. City of Hallowell, 2008 ME 155, 956 A.2d 88.

³¹ Bangor Publishing Co. v. City of Bangor, 544 A.2d 733 (ME 1988).

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<p>fee to cover the actual cost of searching for, retrieving and compiling the requested public record of not more than \$10 per hour after the first hour of staff time per request. Compiling the public record includes reviewing and redacting confidential information.</p> <p>C. If translation is necessary, the agency or official may charge a fee to cover the actual cost of translation.</p> <p>D. An agency or official may not charge for inspection.</p> <p>4. Estimate. The agency or official shall provide to the requester an estimate of the time necessary to complete the request and of the total cost. If the estimate of the total cost is greater than \$20, the agency or official shall inform the requester before proceeding. If the estimate of the total cost is greater than \$100, subsection 5 applies.</p> <p>5. Payment in advance. The agency or official may require a requester to pay all or a portion of the estimated costs to complete the request prior to the translation, search, retrieval, compiling and copying of the public record if:</p> <p>A. The estimated total cost exceeds \$100; or</p> <p>B. The requester has previously failed to pay a properly assessed fee under this chapter in a timely manner.</p> <p>6. Waivers. The agency or official may waive part or all of the total fee if:</p> <p>A. The requester is indigent; or</p> <p>B. Release of the public record requested is in the public interest because doing so is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.</p>	<p>reviewing and redacting</p> <ul style="list-style-type: none"> • Pay State costs to translate • No fee for inspection • Estimate of costs • Notify requestor if greater than \$20 • If greater than \$100, see subsection 5 • Payment in advance • Waiver of fees 	

§409. Appeals

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<p>1. Records. If any body or agency or official who has custody or control of any public record refuses permission to inspect or copy or abstract a public record, this denial must be made by the body or agency or official in writing, stating the reason for the denial, within 5 working days of the request for inspection by any person. Any person aggrieved by denial may appeal, within 5 working days of the receipt of the written notice of denial, to any Superior Court within the State. If a court, after a trial de novo, determines such denial was not for just and proper cause, it shall enter an order for disclosure. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus and actions brought by the State against individuals.</p>	<ul style="list-style-type: none"> Refusal of inspection or copying must be <ul style="list-style-type: none"> In writing Within 5 working days of request Appeal from denial within 5 working days of denial to Superior Court Court may issue order of disclosure Expedited 	<ul style="list-style-type: none"> Failure of governmental body to respond to request for records in the time established by statute is deemed a denial of the request³² In its review, superior court is the forum of origin for a determination of both facts and law with respect to the alleged violation and does not function in an appellate capacity, and thus, procedures for taking additional evidence on judicial review are inapplicable (overruling <u>Marxsen v. Board of Directors</u>, 591 A.2d 867).³³
<p>2. Actions. If any body or agency approves any ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official action in an executive session, this action is illegal and the officials responsible are subject to the penalties hereinafter provided. Upon learning of any such action, any person may appeal to any Superior Court in the State. If a court, after a trial de novo, determines this action was taken illegally in an executive session, it shall enter an order providing for the action to be null and void. Appeals are privileged in respect to their assignment for trial over all other actions except writs of habeas corpus or actions brought by the State against individuals.</p>	<ul style="list-style-type: none"> Approval of official action in executive session is illegal; officials subject to penalties Superior Court shall declare action null and void if action taken illegally Expedited 	<ul style="list-style-type: none"> Freedom of Access claim must be filed within 30 days of discovering a possible violation (MRCivP, Rule 80B)³⁴ Burden of proof on agency to establish “just and proper cause” for denial of a FOA request³⁵ Supreme Judicial Court, sitting as the Law Court, could not create settlement negotiation privilege against disclosure under FOA; Court could only create new privileges pursuant to its rulemaking powers.³⁶
<p>3. Proceedings not exclusive. The proceedings authorized by this section are not exclusive of any other civil remedy provided by law.</p>	<ul style="list-style-type: none"> Other civil remedies available 	
<p>4. Attorney’s fees. In an appeal under subsection 1 or 2, the court may award reasonable</p>	<ul style="list-style-type: none"> Reasonable attorney’s fees and litigation expenses 	

³² Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

³³ Underwood v. City of Presque Isle, 1998 ME 166, 715 A.2d 148.

³⁴ Palmer v. Portland School Committee et al., 652 A.2d 86 (ME 1995).

³⁵ Springfield Terminal Railway Company v. Department of Transportation, 2000 ME 126, 754 A.2d 353.

³⁶ Citizens Communications Co. v. Attorney General, 2007 ME 114, 931 A.2d 503.

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attorney's fees and litigation expenses to the substantially prevailing plaintiff who appealed the refusal under subsection 1 or the illegal action under subsection 2 if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.	maybe awarded to the prevailing plaintiff who appealed if the court determines that the refusal or illegal action was committed in bad faith	

This subsection applies to appeals under subsection 1 or 2 filed on or after January 1, 2010.

§410. Violations

For every willful violation of this subchapter, the state government agency or local government entity whose officer or employee committed the violation shall be liable for a civil violation for which a forfeiture of not more than \$500 may be adjudged.

- Willful = intentional or knowing
- Agency or entity liable for civil violation; fine of up to \$500
- Penalties for official actions taken in executive session in violation of FOA laws may only be sought by the Attorney General or AG's representative³⁷
- Only Attorney General or AG's representative may enforce FOA laws by seeking imposition of fine³⁸
- If a requesting party has undertaken successful appeal of denial, that party is entitled to costs³⁹

§411. Right To Know Advisory Committee

1. Advisory committee established.

The Right To Know Advisory Committee, referred to in this chapter as "the advisory committee," is established to serve as a resource for ensuring compliance with this chapter and upholding the integrity of the purposes underlying this chapter as it applies to all public entities in the conduct of the public's business.

2. Membership.

The advisory committee consists of the following members:

- A. One Senator who is a member of the joint standing committee of the Legislature having jurisdiction over

³⁷ Lewiston Daily Sun v. School Administrative District No. 43, 1999 ME 143, 738 A.2d 1239.

³⁸ Scola v. Town of Sanford, 1987 ME 119, 695 A.2d 1194.

³⁹ Cook v. Lisbon School Committee, 682 A.2d 672 (ME 1996).

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judiciary matters, appointed by the President of the Senate;

B. One member of the House of Representatives who is a member of the joint standing committee of the Legislature having jurisdiction over judiciary matters, appointed by the Speaker of the House;

C. One representative of municipal interests, appointed by the Governor;

D. One representative of county or regional interests, appointed by the President of the Senate;

E. One representative of school interests, appointed by the Governor;

F. One representative of law enforcement interests, appointed by the President of the Senate;

G. One representative of the interests of State Government, appointed by the Governor;

H. One representative of a statewide coalition of advocates of freedom of access, appointed by the Speaker of the House;

I. One representative of newspaper and other press interests, appointed by the President of the Senate;

J. One representative of newspaper publishers, appointed by the Speaker of the House;

K. Two representatives of broadcasting interests, one appointed by the President of the Senate and one appointed by the Speaker of the House;

L. Two representatives of the public, one appointed by the President of the Senate and one appointed by the Speaker of the House; and

M. The Attorney General or the Attorney General's designee.

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The advisory committee shall invite the Chief Justice of the Supreme Judicial Court to designate a member of the judicial branch to serve as a member of the committee.

3. Terms of appointment. The terms of appointment are as follows.

A. Except as provided in paragraph B, members are appointed for terms of 3 years.

B. Members who are Legislators are appointed for the duration of the legislative terms of office in which they were appointed.

C. Members may serve beyond their designated terms until their successors are appointed.

4. First meeting; chair. The Executive Director of the Legislative Council shall call the first meeting of the advisory committee as soon as funding permits. At the first meeting, the advisory committee shall select a chair from among its members and may select a new chair annually.

5. Meetings. The advisory committee may meet as often as necessary but not fewer than 4 times a year. A meeting may be called by the chair or by any 4 members.

6. Duties and powers. The advisory committee:

A. Shall provide guidance in ensuring access to public records and proceedings and help to establish an effective process to address general compliance issues and respond to requests for interpretation and clarification of the laws;

B. Shall serve as the central source and coordinator of information about the freedom of access laws and the people's right to know. The advisory committee shall provide the basic information about the requirements of the law and the best practices for agencies and public officials. The advisory committee shall also provide general information about

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	<p>the freedom of access laws for a wider and deeper understanding of citizens' rights and their role in open government. The advisory committee shall coordinate the education efforts by providing information about the freedom of access laws and whom to contact for specific inquiries;</p>	
	<p>C. Shall serve as a resource to support the establishment and maintenance of a central publicly accessible website that provides the text of the freedom of access laws and provides specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. The website must include the contact information for agencies, as well as whom to contact with complaints and concerns. The website must also include, or contain a link to, a list of statutory exceptions to the public records laws;</p>	
	<p>D. Shall serve as a resource to support training and education about the freedom of access laws. Although each agency is responsible for training for the specific records and meetings pertaining to that agency's mission, the advisory committee shall provide core resources for the training, share best practices experiences and support the establishment and maintenance of online training as well as written question-and-answer summaries about specific topics. The advisory committee shall recommend a process for collecting the training completion records required under section 412, subsection 3 and for making the information publicly available;</p>	
	<p>E. Shall serve as a resource for the review committee under subchapter 1-A in examining public records exceptions in both existing laws and in proposed legislation;</p>	
	<p>F. Shall examine inconsistencies in statutory language and may recommend standardized language in the statutes to clearly delineate what information is not public and the circumstances under which</p>	

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that information may appropriately be released;

G. May make recommendations for changes in the statutes to improve the laws and may make recommendations to the Governor, the Legislature, the Chief Justice of the Supreme Judicial Court and local and regional governmental entities with regard to best practices in providing the public access to records and proceedings and to maintain the integrity of the freedom of access laws and their underlying principles. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out legislation based on the advisory committee's recommendations;

H. Shall serve as an adviser to the Legislature when legislation affecting public access is considered;

I. May conduct public hearings, conferences, workshops and other meetings to obtain information about, discuss, publicize the needs of and consider solutions to problems concerning access to public proceedings and records;

J. Shall review the collection, maintenance and use of records by agencies and officials to ensure that confidential records and information are protected and public records remain accessible to the public; and

K. May undertake other activities consistent with its listed responsibilities.

7. Outside funding for advisory committee activities. The advisory committee may seek outside funds to fund the cost of public hearings, conferences, workshops, other meetings, other activities of the advisory committee and educational and training materials. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative

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Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

8. Compensation. Legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in Title 3, section 2, and reimbursement for travel and other necessary expenses for their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

10. Report. By January 15, 2007 and at least annually thereafter, the advisory committee shall report to the Governor, the Legislative Council, the joint standing committee of the Legislature having jurisdiction over judiciary matters and the Chief Justice of the Supreme Judicial Court about the state of the freedom of access laws and the public's access to public proceedings and records.

§412 Public records and proceedings training for certain elected officials

1. Training required. Beginning July

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1, 2008, an elected official subject to this section shall complete a course of training on the requirements of this chapter relating to public records and proceedings. The official shall complete the training not later than the 120th day after the date the elected official takes the oath of office to assume the person's duties as an elected official. For elected officials subject to this section serving in office on July 1, 2008, the training required by this section must be completed by November 1, 2008.

2. Training course; minimum requirements. The training course under subsection 1 must be designed to be completed by an official in less than 2 hours. At a minimum, the training must include instruction in:

- A. The general legal requirements of this chapter regarding public records and public proceedings;
- B. Procedures and requirements regarding complying with this chapter;
- C. Penalties and other consequences for failure to comply with this chapter.

An elected official meets the training requirements of this section by conducting a thorough review of all the information made available by the State on a publicly accessible website pursuant to section 411, subsection 6, paragraph C regarding specific guidance on how a member of the public can use the law to be a better informed and active participant in open government. To meet the requirements of this subsection, any other training course must include all of this information and may include additional information.

3. Certification of completion. Upon completion of the training course required under subsection 1, the elected official shall make a written or an electronic record attesting to the fact that the training has been completed. The record must identify the training completed and the date of completion. The elected official shall keep the record or file it with the public entity to which the official was elected.

4. Application. This section applies to the following elected officials:

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A. The Governor;

B. The Attorney General, Secretary of State, Treasurer of State and State Auditor;

C. Members of the Legislature elected after November 1, 2008;

D. Deleted. Laws 2007, c. 576, §2.

E. Commissioners, treasurers, district attorneys, sheriffs, registers of deeds, registers of probate and budget committee members of county governments;

F. Municipal officers, clerks, treasurers, assessors and budget committee members of municipal governments;

G. Officials of school units and school boards; and

H. Officials of regional or other political subdivisions who, as part of the duties of their offices, exercise executive or legislative powers. For the purposes of this paragraph, "regional or other political subdivision" means an administrative entity or instrumentality created pursuant to Title 30-A, chapter 115 or 119 or a quasi-municipal corporation or special purpose district, including, but not limited to, a water district, sanitary district, hospital district, school district of any type, transit district as defined in Title 30-A, section 3501, subsection 1 or regional transportation corporation as defined in Title 30-A, section 3501, subsection 2.

SUBCHAPTER 1-A

(headnote revised 2011)

PUBLIC RECORDS EXCEPTIONS AND ACCESSIBILITY

§431. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms

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have the following meanings.

1. Public records exception.

"Public records exception" or "exception" means a provision in a statute or a proposed statute that declares a record or a category of records to be confidential or otherwise not a public record for purposes of subchapter 1.

2. Review committee.

"Review committee" means the joint standing committee of the Legislature having jurisdiction over judiciary matters.

3. Advisory committee.

"Advisory committee" means the Right To Know Advisory Committee established in Title 5, section 12004-J, subsection 14 and described in section 411.

§432. Exceptions to public records; review

1. Recommendations.

During the second regular session of each Legislature, the review committee may report out legislation containing its recommendations concerning the repeal, modification and continuation of public records exceptions and any recommendations concerning the exception review process and the accessibility of public records. Before reporting out legislation, the review committee shall notify the appropriate committees of jurisdiction concerning public hearings and work sessions and shall allow members of the appropriate committees of jurisdiction to participate in work sessions.

• Amended 2011

2. Process of evaluation.

According to the schedule in section 433, the advisory committee shall evaluate each public records exception that is scheduled for review that biennium. This section does not prohibit the evaluation of a public record exception by either the advisory committee or the review committee at a time other than that listed in section 433. The following criteria apply in determining whether each exception scheduled for review should be repealed, modified or remain unchanged:

A. Whether a record protected by the exception still needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record

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protected by the exception;

C. Whether federal law requires a record to be confidential;

D. Whether the exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the exception as compared to the public's interest in the record protected by the exception.

2-A. Accountability review of agency or official. In evaluating each public records exception, the advisory committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

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2-B. Recommendations to review committee. The advisory committee shall report its recommendations under this section to the review committee no later than the convening of the second regular session of each Legislature.

2-C. Accessibility of public records.

The advisory committee may include in its evaluation of public records statutes the consideration of any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

• New 2011

3. Assistance from committees of jurisdiction. The advisory committee may seek assistance in evaluating public records exceptions from the joint standing committees of the Legislature having jurisdiction over the subject matter related to the exceptions being reviewed. The advisory committee may hold public hearings after notice to the appropriate committees of jurisdiction.

§433. Schedule for review of exceptions to public records

1. Scheduling guidelines. (repealed)

2. Scheduling guidelines. The advisory committee shall use the following list as a guideline for scheduling reviews of public records exceptions.

A. Exceptions codified in the following
Titles are scheduled for review in 2008:

- (1) Title 1;
- (2) Title 2;
- (3) Title 3;
- (4) Title 4;
- (5) Title 5;
- (6) Title 6;
- (7) Title 7;
- (8) Title 8;

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(9) Title 9-A; and

(10) Title 9-B.

B. Exceptions codified in the following Titles are scheduled for review in 2010:

(1) Title 10;

(2) Title 11;

(3) Title 12;

(4) Title 13;

(5) Title 13-B;

(6) Title 13-C;

(7) Title 14;

(8) Title 15;

(9) Title 16;

(10) Title 17;

(11) Title 17-A;

(12) Title 18-A;

(13) Title 18-B;

(14) Title 19-A;

(15) Title 20-A; and

(16) Title 21-A.

C. Exceptions codified in the following Titles are scheduled for review in 2012:

(1) Title 22;

(2) Title 23;

(3) Title 24;

(4) Title 24-A; and

(5) Title 25.

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**D. Exceptions codified in the following
Titles are scheduled for review in 2014:**

- (1) Title 26;
- (2) Title 27;
- (3) Title 28-A;
- (4) Title 29-A;
- (5) Title 30;
- (6) Title 30-A;
- (7) Title 31;
- (8) Title 32;
- (9) Title 33;
- (10) Title 34-A;
- (11) Title 34-B;
- (12) Title 35-A;
- (13) Title 36;
- (14) Title 37-B;
- (15) Title 38; and
- (16) Title 39-A.

3. Scheduling changes. The advisory committee may make adjustments to the scheduling guidelines provided in subsection 2 as it determines appropriate and shall notify the review committee of such adjustments.

§434. Review of proposed exceptions to public records

1. Procedures before legislative committees. Whenever a legislative measure containing a new public records exception is proposed or a change that affects the accessibility of a public record is proposed, the joint standing committee of the Legislature having jurisdiction over the proposal shall hold a public hearing and determine the level of support for the proposal

• Amended 2011

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among the members of the committee. If there is support for the proposal among a majority of the members of the committee, the committee shall request the review committee to review and evaluate the proposal pursuant to subsection 2 and to report back to the committee of jurisdiction. A proposed exception or proposed change that affects the accessibility of a public record may not be enacted into law unless review and evaluation pursuant to subsections 2 and 2-B have been completed.

2. Review and evaluation. Upon referral of a proposed public records exception from the joint standing committee of the Legislature having jurisdiction over the proposal, the review committee shall conduct a review and evaluation of the proposal and shall report in a timely manner to the committee to which the proposal was referred. The review committee shall use the following criteria to determine whether the proposed exception should be enacted:

A. Whether a record protected by the proposed exception needs to be collected and maintained;

B. The value to the agency or official or to the public in maintaining a record protected by the proposed exception;

C. Whether federal law requires a record covered by the proposed exception to be confidential;

D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in the disclosure of records;

E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records;

F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially

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outweighs the public interest in the disclosure of records;

G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records;

H. Whether the proposed exception is as narrowly tailored as possible; and

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

2-A. Accountability review of agency or official. In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.

2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.

3. Report. The review committee shall report its findings and recommendations on whether the proposed exception or proposed limitation on accessibility should be enacted to the joint standing committee of the Legislature having jurisdiction over the proposal.

- New 2011

- Amended 2011

G:\STUDIES 2011\Right to Know Advisory Committee\FOA laws sbs update 2011.doc (8/31/2011 11:06:00 AM)

Reinsch, Margaret

From: Parr, Christopher
Sent: Wednesday, August 31, 2011 10:08 AM
To: Glessner, James T.; Mal J. Leary; Harry Pringle; Cianchette, Michael; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows
Subject: RE: Right to Know Advisory Committee - request

Dear Members of the Right to Know Advisory Committee (RTKAC):

By way of following up on the inquiry I made in July (please reference the e-mail directly below), and in anticipation of the RTKAC Legislative Subcommittee's meeting on Thursday, which I hope to attend:

I am writing to provide the following information for you to consider as you review and discuss both the amendments to the Maine Freedom of Access Act (FOAA) that have been proposed in LD 1465 (@ http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/SP045601.asp) and the "necessity of formalities" matters that are included on the subcommittee's agenda.

The Maine State Police Records Management Services Unit (MSP.RMS) is primarily staffed by an office clerk and a Maine State Police Sergeant. In 2009, MSP.RMS alone - just that unit - received 3,136 requests for records (or an average of approximately 60 requests per week). In 2010, the unit received 3,991 requests for records (or an average of approximately 76 requests per week). Through August 1, 2011, the unit has received 2,451 such requests.

Some of the requests MSP.RMS received were made expressly pursuant to the FOAA (i.e., the person making the request cited or "invoked" the FOAA when making the request); however, other requests were made without an express citation to or invocation of the FOAA.

I would simply ask that you consider the above information, and the question I presented in my July e-mail, as you deliberate the amendments to the FOAA that are proposed in LD 1465 - particularly (but not only) with respect to the practicality of the timelines that are proposed in Sec. 4 of the bill.

Thanks very much for your attention to this matter.

Best Regards, C

CHRISTOPHER PARR
 COUNSEL | MAINE STATE POLICE
 MAINE DEPARTMENT OF PUBLIC SAFETY

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From: Parr, Christopher

Sent: Monday, July 18, 2011 11:33 AM

To: Glessner, James T.; Mal J. Leary; Harry Pringle; Cianchette, Michael; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows

Subject: RE: Right to Know Advisory Committee - request

Harry, Mal, Ted:

Thanks very much for your responses; however, I do not think I framed my question quite correctly, as I am neither requesting nor expecting a legal opinion or legal advice from any of the Members of the Right to Know Advisory Committee (RTKAC) in this matter.

Rather, my question relates directly to an aspect of the fundamental public policy intent of the Maine Freedom of Access Act (FOAA). Asked differently (and, in retrospect, more as I intended), my question is this:

As a matter of public policy, ought it to be the case that a request for records *needs to expressly* cite/invoke the Maine Freedom of Access Act in order for the request to be an "official" Freedom of Access Act request that is subject to the requirements and protections of the Act?

I do not pose the question as an academic one. Indeed, by way of some background as to why I ask the question:

- It is not unusual for MSP to receive numerous requests for agency records every week, but not all of the requests cite or "invoke" the FOAA (in fact, I would guess that most do not).

My question is whether, given the public policy intent of the FOAA, such requests – as a matter of *public policy* – *ought to be* nonetheless regarded by our agency as "official" FOAA requests that are subject to the requirements and protections of the Act.

- MSP recently received a written request for access to certain agency records; the request was not expressly made pursuant to FOAA. In the same written request, however, the requestor indicated he/she *would file* a FOAA request for access to the subject records, if necessary.

The structure of the above request implied to me that the requestor did not seem to consider his/her written request for access to the subject records to be an "actual" FOAA request, but presumably some other type of request (seemingly one the requestor did not think was entitled to the requirements and protections of the FOAA).

My question: As a matter of *public policy*, *should* government agencies treat the two types of requests (i.e., a request for access to records that expressly cites/invokes FOAA vs. such a request that does not cite/invoke FOAA), differently?

As said above, I am not seeking a legal opinion or legal advice from any of the Members of the RTKAC in this matter; rather, I am only asking for any comments or thoughts (or even informal (non-legal) opinions) any Members of the Committee would be willing to share in response to the public policy-related questions I have raised here.

Thanks again, and thanks in advance.

Best, C

CHRISTOPHER PARR
COUNSEL | MAINE STATE POLICE
MAINE DEPARTMENT OF PUBLIC SAFETY

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From: James Glessner [mailto:james.t.glessner@courts.maine.gov]

Sent: Sunday, July 17, 2011 9:12 PM

To: Mal J. Leary

Cc: Harry Pringle; Cianchette, Michael; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows; Parr, Christopher

Subject: Re: Right to Know Advisory Committee - request

I think that Chris raises important questions, but I too agree with Harry.

On Sat, Jul 16, 2011 at 9:18 AM, Mal J. Leary <Mal@mainecapitolnews.com> wrote:

I agree with Harry.

Mal Leary
Capitol News Service
State House Station #127
Augusta, Maine 04333
207-621-0702

From: Harry Pringle [hrpringle@dwmlaw.com]

Sent: Saturday, July 16, 2011 7:35 AM

To: 'Cianchette, Michael'; Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; Glessner, James T.; heidi.pushard@gmail.com; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; Mal J. Leary; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Reinsch, Margaret; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows

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Cc: Parr, Christopher
Subject: RE: Right to Know Advisory Committee - request

I don't object to adding this to an already very long agenda of issues, but I'm not sure we're equipped as a subcommittee to issue legal opinions. Isn't this inquiry better addressed to the AG's office? Harry

From: Cianchette, Michael [mailto:Michael.Cianchette@maine.gov]
Sent: Friday, July 15, 2011 3:23 PM
To: Reinsch, Margaret; ajhiggins@mpbn.net; Bruce Smith; David Hastings (2); Dion, RepMark; Glessner, James T.; heidi.pushard@gmail.com; Harry Pringle; jmeyer@sunjournal.com; nothymefarm@metrocast.net; kmorgan@seacoastonline.com; mal@mainecapitolnews.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Reinsch, Margaret; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows
Cc: Parr, Christopher
Subject: RE: Right to Know Advisory Committee - request

Concur with Peggy's suggestion to add this to the Legislative Subcommittee agenda.

Michael J. Cianchette

Deputy Counsel and Policy Advisor for Defense, Veterans, and Emergency Management

Office of the Governor

[Direct] (207) 287-3543

From: Reinsch, Margaret [mailto:Margaret.Reinsch@legislature.maine.gov]
Sent: Friday, July 15, 2011 3:20 PM
To: AJ Higgins (ajhiggins@mpbn.net); bwsmith@dwmlaw.com; Cianchette, Michael; David Hastings (2); Dion, RepMark; Glessner, James T.; heidi.pushard@gmail.com; hrpringle@dwmlaw.com; jmeyer@sunjournal.com; Joan Nass (nothymefarm@metrocast.net); kmorgan@seacoastonline.com; mal@mainecapitolnews.com; McCarthyReid, Colleen; mviolette@portlandradiogroup.com; Nass, RepJoan; Percy L. Brown & Son Inc.; Perry Antone; Pistner, Linda; plbrownplumbing@myfairpoint.net; Reinsch, Margaret; rflewelling@memun.org; Robb Weaver; Sean OMara; Shenna Bellows
Cc: Parr, Christopher
Subject: FW: Right to Know Advisory Committee - request

Greetings -

Chris Parr, the FOA contact for the State Police, asked me to forward the following question. Perhaps the Legislative Subcommittee would like to put it on your agenda?

Thanks
Peggy

Margaret J. Reinsch, Esq., Legislative Analyst

Joint Standing Committee on Judiciary

Office of Policy and Legal Analysis

Maine State Legislature

13 State House Station

8/31/2011

Augusta, Maine 04333

(207) 287-1670

(207) 287-1673 (direct and voice-mail)

(207) 287-1275 (fax)

margaret.reinsch@legislature.maine.gov

From: Parr, Christopher

Sent: Friday, July 15, 2011 12:06 PM

To: Reinsch, Margaret

Subject: RE: Right to Know Advisory Committee

Peggy:

Would you kindly forward the following informal inquiry to the Members of the Right to Know Advisory Committee?

Thanks very much in advance.

Best, C

####

Dear Members of the Right to Know Advisory Committee:

The purpose of this e-mail is to respectfully ask for any thoughts or comments you would be willing to share regarding the following question:

Must a request for records expressly cite/invoke the Maine Freedom of Access Act in order for the request to qualify as an "official" Freedom of Access Act request that is subject to the requirements and protections of the Act?

Asked another way: Is there a difference between how the hypothetical State of Maine government agency receiving the following hypothetical requests for records, must respond to the respective requests? (And, if so, what is that difference?):

- Request "A": "Pursuant to the Maine Freedom of Access Act, please forward to me via U.S. mail a copy of the minutes from government agency XYZ's weekly public meeting held last week."

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- Request "B": "Pursuant to 1 MRSA c. 13, please forward to me via U.S. mail a copy of the minutes from government agency XYZ's weekly public meeting held last week."
- Request "C": "Please forward to me via U.S. mail a copy of the minutes from government agency XYZ's weekly public meeting held last week."

Any thoughts or comments you would be willing to share would be greatly appreciated.

Thank you very much in advance.

Best,

C

####

CHRISTOPHER PARR

COUNSEL | MAINE STATE POLICE

MAINE DEPARTMENT OF PUBLIC SAFETY

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Reinsch, Margaret

From: AJay Higgins [AJHiggins@mpbn.net]
Sent: Wednesday, August 31, 2011 10:24 AM
To: Mal J. Leary
Cc: Harry Pringle; Cianchette, Michael; Reinsch, Margaret; Bruce Smith; David Hastings (2); Dion, RepMark; Glessner, James T.; <heidi.pushard@gmail.com>; ; <nothymefarm@metrocast.net>; ; McCarthyReid, Colleen; " <mviolette@portlandradiogroup.com>, "@legislature.maine.gov; Nass@legislature.maine.gov; RepJoan@legislature.maine.gov; " <RepJoan.Nass@legislature.maine.gov>, "@legislature.maine.gov; Percy@legislature.maine.gov; L.Brown@legislature.maine.gov; &@legislature.maine.gov; Son@legislature.maine.gov; "Inc. <brownplumbing3@myfairpoint.net>, "@legislature.maine.gov; Perry@legislature.maine.gov; Antone@legislature.maine.gov; " <pantone@brewerme.org>, "@legislature.maine.gov; Pistner@legislature.maine.gov; Linda <Linda.Pistner@maine.gov>; ; " <rflewelling@memun.org>, "@legislature.maine.gov; Robb@legislature.maine.gov; Weaver@legislature.maine.gov; " <robbweaver@gmail.com>, "@legislature.maine.gov; Sean@legislature.maine.gov; OMara@legislature.maine.gov; " <sean.omara@maine.edu>, "@legislature.maine.gov; Shenna@legislature.maine.gov; Bellows@legislature.maine.gov; " <sbellows@mclu.org>, "@legislature.maine.gov; Parr@legislature.maine.gov; Christopher@legislature.maine.gov; " <Christopher.Parr@maine.gov>"@legislature.maine.gov
Subject: Re: Right to Know Advisory Committee - request

I also agree with Harry. Sorry, I'm so late getting back to you on this...just got my power turned on this morning.

A.J. Higgins
 State House Bureau Chief
 Maine Public Broadcasting Network
 State House Station 70
 Augusta, Me. 04333
 Phone: 207-620-7594

Legislative Subcommittee: 2011

1. Criminal History Record Information Act revision
2. LD 1465, An Act To Amend the Laws Governing Freedom of Access
3. Requests for public records: necessity of formalities (Chris Parr)
4. Governor's letter of 14 July 2011: Clarify the parameters of what really constitutes government business. (His example is grocery receipts for the Blaine House.)
5. Governor's letter of 14 July 2011: Address the abuse of FOA for political purposes: requests made simply to gum up the work of the office and keep the office from moving initiatives forward. He suggested looking at increasing the \$10/hour rate as well as ways to combat abuses.
6. Status of Maine Public Broadcasting Network records under the Freedom of Access laws (Mike Brown)
7. Request from the Maine Heritage Policy Center to Maine State Housing Authority for information about public employees;
8. Definition of "reasonable time" (Dwight Hines)
9. Application of FOA laws to volunteer fire departments (Dwight Hines)
10. Use of technology for the purpose of remote participation by members of public bodies
11. Drafting templates
12. Storage, management and retrieval of public officials' communications, especially email

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